Jurisdictional Statement

Office - Supreme Court, U.S.
FILED
OCT 13 1981
ALEXANDER L. STEVAS
CLERK

81-708

No. ——

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

CITY OF PORT ARTHUR, TEXAS, *Appellant*,

v.

UNITED STATES OF AMERICA

and

ABRAHAM DOUGLAS, ELGIE JENKINS, WALTER MOSLEY, and WILLIE LEWIS, *Appellees*.

On Appeal from the United States District Court for the District of Columbia

JURISDICTIONAL STATEMENT

ROBERT Q. KEITH
MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Building
Beaumont, Texas 77701
(713) 835-5011

Counsel of Record for Appellant

JAMES DOUGLAS WELCH
FRAN M. LAYTON
WALD, HARKRADER & ROSS
1300 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 828-1200

GEORGE WIKOFF
City Attorney of Port Arthur
P.O. Box 1089
Port Arthur, Texas 77640

Attorneys for Appellant

October 13, 1981

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

QUESTIONS PRESENTED

A. Whether the district court misconstrued the requirements of the Voting Rights Act when it held that the dilutive effect of Port Arthur's territorial expansion was not sufficiently neutralized by a voting plan submitted jointly by the City and the United States which gave the expanded City's 35% black voting age population control of at least 33% of the council positions.

B. Whether the election plan developed and submitted jointly by the City and the United States in response to an order of the district court may be found discriminatory in purpose.

C. Whether the district court may require the City to adopt a plurality-win provision for the two non-mayoral at-large seats in its proposed nine member election plan when the plan already provides blacks a fair opportunity to obtain representation reasonably equivalent to their political strength.

D. Whether the district court failed to give proper weight to the Attorney General's determination that the proposed councilmanic election plan satisfies the Voting Rights Act as interpreted by this Court.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
STATUTE INVOLVED	2
STATEMENT OF THE CASE	2
A. A Brief History of This Litigation	2
B. The Voting Plan Now Before This Court	4
THE QUESTIONS ARE SUBSTANTIAL	6
A. The District Court Misapplied Section 5 When It Refused to Approve the Election Plan Submitted Jointly by the City and the United States.	7
B. The Election Plan Jointly Submitted by Port Arthur and the United States and Developed Specifically to Meet the Requirements of the District Court Cannot Be Found to Be Discriminatory in Purpose	10
C. The District Court Improperly Conditioned Preclearance of the Proposed Election Plan Upon Adoption of a Plurality-Win Provision for Two At-Large Seats	11
D. The District Court Failed to Give Proper Weight to the Attorney General's Approval of the Proposed Election Plan	13
CONCLUSION	14

APPENDIX

Memorandum Opinion of the District Court (June 12, 1981)	1a
Order of the District Court (June 12, 1981)	77a
Order of the District Court (July 14, 1981)	79a
Notice of Appeal	81a
Voting Rights Act of 1965, 42 U.S.C. § 1973c	83a
Joint Submission of the City of Port Arthur and the United States	85a

TABLE OF AUTHORITIES

CASES: Page

Beer v. *United States*, 425 U.S. 130 (1976) 10

City of Petersburg v. *United States*, 354 F. Supp. 1021 (D.D.C. 1972), *aff'd without opinion*, 410 U.S. 962 (1973) 7, 12, 13, 14

City of Richmond v. *United States*, 422 U.S. 358 (1975) 6, 9, 12

City of Rome v. *United States*, 472 F. Supp. 221 (D.D.C. 1979), *aff'd*, 446 U.S. 156 (1980) 8, 9

City of Rome v. *United States*, 446 U.S. 156 (1980) ... 5, 9

Perkins v. *Matthews*, 400 U.S. 379 (1971) 12, 14

Udall v. *Tallman*, 380 U.S. 1 (1965) 12

United Jewish Organizations of Williamsburgh, Inc. v. *Carey*, 430 U.S. 144 (1977) 5, 9, 13, 14

United States v. *City of Port Arthur*, No. B-80-216-CA (E.D. Tex. July 24, 1980) 3

STATUTE:

Voting Rights Act of 1965, § 5, *as amended*, 42 U.S.C. § 1973c ..... *passim*

REGULATION:

Procedures for Administration of Section 5 of the Voting Rights Act of 1965, 46 Fed. Reg. 870 (1981) (to be codified at 28 C.F.R. § 51.39) 12, 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. ——

CITY OF PORT ARTHUR, TEXAS, *Appellant*,

v.

UNITED STATES OF AMERICA

and

ABRAHAM DOUGLAS, ELGIE JENKINS, WALTER MOSLEY, and WILLIE LEWIS, *Appellees*.

On Appeal from the United States District Court for the District of Columbia

---

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The June 12, 1981 opinion and order of the three-judge District Court for the District of Columbia are attached at App. 1a-78a. The opinion is reported in 517 F. Supp. 987; the order is presently unreported. The district court's order of July 14, 1981, also unreported, is attached at App. 79a-80a.

JURISDICTION

The City of Port Arthur filed this action seeking a declaratory judgment under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c. The judgment of the three-judge district court was entered on July 14, 1981. The City of Port Arthur filed its notice of appeal (App. 81a) on July 21, 1981. The jurisdiction of this Court is invoked under 42 U.S.C. § 1973c.

STATUTE INVOLVED

Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended by 84 Stat. 314 (1970), and further amended by 89 Stat. 402, 405 (1975), 42 U.S.C. § 1973c (1976), is set forth in full at App. 83a-84a.

STATEMENT OF THE CASE

A. A Brief History of This Litigation

This is a declaratory judgment action under Section 5 of the Voting Rights Act. The voting changes involved are Port Arthur's consolidation of two communities and the annexation of a third, and its establishment of a new election plan to determine the composition of a city council for the expanded jurisdiction.[1] The two consolidations and a proposal to expand the city council from seven at-large members, its configuration since 1963, to eight places, also to be elected at-large, were submitted to the Attorney General for preclearance under the Act. His objection was inter-

---

[1] In the district court, Port Arthur also sought a declaratory judgment with respect to the establishment of advisory councils from the two consolidated areas. This matter is no longer at issue.

posed on March 24, 1978. Subsequently, Port Arthur submitted the annexation and a proposal that the city council be expanded to nine at-large positions. This preclearance request was similarly denied on March 5, 1980.

After negotiations with the Department of Justice failed to produce results, Port Arthur filed its complaint in the district court seeking a declaratory judgment that its expansion[2] and 8-0-1 voting plan were not discriminatory in purpose or effect. Thereafter, Port Arthur was permitted to amend its complaint by adding a second count which prayed for the same judgment as to a different configuration of the proposed nine member council[3] (this 4-4-1 voting plan was not presented to the Attorney General for preclearance). At the trial of the action, the parties directed evidence and argument principally to the validity of the 4-4-1 plan.

On June 12, 1981, the three-judge court issued an order and memorandum opinion denying the requested

---

[2] The consolidations and annexation were accomplished under different provisions of Texas law, the former by popular vote in the affected jurisdictions. Both forms of expansion are treated the same for Section 5 purposes and are referred to together hereinafter as "the expansion" or "the annexation."

[3] The proposed 4-4-1 plan was adopted by the voters of the expanded City in a charter change election on August 9, 1980, held with the approval of a three-judge district court sitting in the Eastern District of Texas. *See United States* v. *City of Port Arthur*, No. B-80-216-CA (E.D. Tex. July 24, 1980). It provided for election of four members from single-member districts and four members who would be elected at-large but required to reside in each of the same four districts. The mayor, who held the remaining position, also would be elected at-large.

relief. The court found that the City of Port Arthur had "established that the principal motives for enlarging its boundaries . . . were non-discriminatory," App. 46a, but that "the City ha[d] not shown the lack of a discriminatory purpose behind the adoption of either the 4-4-1 or the 8-0-1 plans." *Id.* Further, it held that Port Arthur had failed to prove that implementation of either of the proposed election schemes would not have a discriminatory effect. *Id.*

The district court retained jurisdiction of the matter and directed the City to devise within 15 days an electoral system which satisfied the concerns expressed in its opinion. App. 78a. In response, Port Arthur proposed on June 29, 1981 that it hold a charter change election for the adoption of a new 4-2-3 voting plan consisting of a council chosen from six single-member districts and three at-large seats, including the mayor.

B. The Voting Plan Now Before This Court

Following the Order of June 12, the City and the Attorney General engaged in a lengthy dialogue to develop an electoral plan that would satisfy the Voting Rights Act in light of the findings of the district court. The result was a revision of the election plan submitted by Port Arthur on June 29 to include residency districts for the non-mayoral at-large seats. This plan, jointly submitted by the United States and Port Arthur on July 8, 1981,[4] is the subject of Port Arthur's appeal here.

The plan agreed to is a 4-2-3 voting scheme which divides the City into four single-member districts

---

[4] The Joint Submission of the City of Port Arthur and the United States is attached at App. 85a-87a.

(numbered one through four), each of which is entitled to elect one member to the nine-member city council. In addition, one representative will be elected by residents of single-member District 5 (a combination of Districts 1 and 4) and another by the residents of single-member District 6 (a combination of Districts 2 and 3).[5] Three city council positions are to be elected at-large. Two of these at-large members, council positions seven and eight, are required to reside in Districts 5 and 6, respectively; the remaining at-large position is the mayor, for which there is no residency requirement. Each council member will be elected for a two-year term by majority vote.

The United States and the City agree that under this plan, designed to comply with the requirements imposed by the district court's memorandum opinion of June 12, 1981, blacks will have the "opportunity to elect representatives of their choice in three of the six single-member districts." App. 85a. The Attorney General concluded that this opportunity to control the selection of 33% of the nine available council positions provides blacks, who are 35% of the voting age population in the post-annexation City, with "representation reasonably equivalent to their political strength in the enlarged city."[6] App. 86a. For its part, the

---

[5] Single-member Districts 1 through 4 are roughly equal in population, varying from 14,990 (District 1) to 15,670 (District 3). District 5 has a population of 30,300 and District 6 has 30,995 residents. City of Port Arthur's Report to the Court Pursuant to Order of June 12, 1981, at 2 (filed June 29, 1981).

[6] This Court has indicated its strong preference for using voting age population data to assess the impact of annexations on black voting strength in Section 5 cases. *City of Rome* v. *United States*, 446 U.S. 156, 186 n. 22 (1980). *See also United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U.S. 144, 164 n.23 (1977).

United States noted that it had considered the significance, if any, of the absence of a plurality-win provision for the two non-mayoral at-large seats. The Attorney General concluded that this omission did not justify denying Section 5 preclearance. *Id.* Two of the four intervenor-defendants accepted the jointly submitted 4-2-3 election plan, and the remaining two noted their objection.

In its July 14, 1981 order, the district court (one judge dissenting) rejected the 4-2-3 plan proposed by the Attorney General and Port Arthur. Instead, it offered to grant preclearance on the condition that a plurality-win provision be imposed on the two non-mayoral at-large seats. App. 79a-80a. This order of the district court creates new and unprecedented requirements under the Voting Rights Act, thereby confusing the clear standard this Court has applied in Section 5 cases and raising questions of national significance which are so substantial as to require plenary consideration here.

THE QUESTIONS ARE SUBSTANTIAL

Port Arthur has neutralized, to the extent possible, the dilution of black voting strength caused by the expansion of the City's boundaries. The 4-2-3 voting plan jointly submitted by the City and the Attorney General satisfied the requirements set forth in *City of Richmond* as well as those of the district court's June 12, 1981 opinion. Nevertheless, the lower court refused to approve the plan unless the City adopted a plurality-win provision for two at-large seats. This additional condition is fundamentally at odds with this Court's interpretation of Section 5 of the Voting Rights Act.

A. The District Court Misapplied Section 5 When It Refused to Approve the Election Plan Submitted Jointly by the City and the United States.

The dilution of black voting strength in Port Arthur[7] which flowed from the City's territorial expansion does not, by itself, render the annexation impermissible under Section 5. Rather, the Act requires that the City draft an election plan "calculated to neutralize to the extent possible any adverse [impact] upon the political participation of black voters" resulting from its annexation. *City of Petersburg* v. *United States*, 354 F. Supp. 1021, 1031 (D.D.C. 1972), *aff'd without opinion*, 410 U.S. 962 (1973).

In the plan now before the Court, three of the single-member districts (Districts 1, 4, and 5) have substantial black majorities.[8] Black voters in these districts will be able to elect representatives of their choice to the council, thereby giving the black community the opportunity to control selection of 33% of the council positions. This level of representation is reasonably commensurate with black political strength given the district court's determination that blacks constitute approximately 35% of the voting age population in the post-annexation City. App. 54a.

Furthermore, blacks in Port Arthur will exert substantial influence over the selection of council position 7, the at-large member who must reside in District 5,

---

[7] The district court found that the expansion of Port Arthur increased the voting age population of non-blacks by 18% and the voting age population of blacks by 0.48%. App. 53a n.153.

[8] Blacks comprise 79% of District 1, 62.78% of District 4, and 70.83% of District 5. City of Port Arthur's Report to the Court Pursuant to Order of June 12, 1981, at 2 (filed June 29, 1981).

which is 70.83% black. As the United States noted in the district court, the residency requirement associated with at-large seat 7 "assure[s] that one of the at-large representatives will reside in, and hopefully represent the interest of, the portion of the city where a sizable majority of the black population resides." App. 87a. The ability to affect the selection of at-large position 7, while concededly of less importance than the overt political control by blacks of three single-member districts, is nonetheless extremely significant. As the district court noted in *City of Rome,* "adequacy of representation is not measured solely by the black community's ability to elect its first-choice candidate." *City of Rome* v. *United States,* 472 F. Supp. 221, 248 (D.D.C. 1979), *aff'd,* 446 U.S. 156 (1980).

Moreover, it appears that the proposed 4-2-3 plan provides blacks the same opportunity to elect representatives as would an exclusively single-member district plan. On the basis of the evidence presented to the district court and its more than three years of study of voting in Port Arthur, the United States concluded that if the City devised a fairly drawn plan for eight single-member districts, "it does not appear that minority representation would increase appreciably." App. 86a.

These facts show that Port Arthur has met this Court's "bright line" test for judging whether the extension of a city's boundaries has the discriminatory effect prohibited by Section 5. The standard against which the proposed plan must be judged is:

> Where the annexation has the effect of reducing the percentage of blacks in the city, the proscribed "effect" on voting rights can be avoided by a post-annexation districting plan which "fairly reflects

> the strength of the Negro community as it exists after the annexation" and which "would afford [it] representation reasonably equivalent to [its] political strength in the enlarged community."

United Jewish Organizations of Williamsburgh, Inc. v. *Carey*, 430 U.S. 144, 160 (1977), *quoting City of Richmond* v. *United States*, 422 U.S. 358, 370-371 (1975).[9] *Accord, City of Rome* v. *United States*, 446 U.S. 156, 187 (1980).

As is evident from its formulation of the applicable standard, the Court recognizes that it would be unreasonable, if not impossible, to require cities to devise plans that afford minorities representation *precisely proportional* to their political strength in the jurisdiction. Obviously, any city council involves a relatively small number of elected officials.[10] Given this constraint, even if Port Arthur were able to draft a plan assuring blacks the opportunity to elect four members (or 44.4%) of the nine-member council, the result would be substantial over-representation of the City's black community. Compliance with the "effect" test of the Voting Rights Act has never been held to require such over-representation. *City of Richmond* v. *United States*, 422 U.S. at 371.[11]

---

[9] *See also City of Rome* v. *United States*, 472 F. Supp. at 247 ("we must inquire further whether the black community, after the annexations, has a fair opportunity to obtain representation reasonably commensurate with its post-annexation numerical strength").

[10] Neither the court below nor any party to this case has suggested that Port Arthur's council should be expanded beyond nine members.

[11] Indeed, the very definition of proportional representation precludes such over-representation. *See, e.g., United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U.S. at 169 (Brennan, J.

By denying preclearance to the election plan proposed in this case, the district court has created considerable uncertainty about the level of representation minorities must be assured after an annexation. The 4-2-3 plan guarantees black voters, who are 35% of the voting age population, control over the selection of 33% of the city council representatives. The court below, without explaining why this 2% differential "insufficiently neutralize[d] the adverse impact upon minority voting strength," App. 79a, held that the Voting Rights Act requires more. This finding is without support in the opinions of this Court or in the language of Section 5 and is clearly erroneous.

B. The Election Plan Jointly Submitted by Port Arthur and the United States and Developed Specifically to Meet the Requirements of the District Court Cannot Be Found to Be Discriminatory in Purpose.

The Voting Rights Act requires that voting changes subject to the Act not be tainted by discriminatory intent. The district court held that the annexation was not so motivated. App. 4a. It is unclear from the Order of July 14, 1981, however, whether the court rejected

---

concurring) (approving a pattern of districting in New York County which "closely approximated" proportional representation). Significantly, in *Beer* v. *United States*, it was said that if a proportional representation standard were used to test the adequacy of the New Orleans election plan there at issue, the 34.5% black voting age population "should reasonably expect to control at least two" of the seven city council seats, or 28.6% of the council's members. 425 U.S. 130, 159 n.19 (1976) (Marshall, J. dissenting). The 2% representation differential in the Port Arthur election plan is far more favorable to blacks than the 5.9% differential which Justice Marshall has said would satisfy the Act.

the 4-2-3 voting plan based on a finding that it was adopted with a discriminatory purpose. In the circumstances, any such finding would be totally without foundation. The only election plan then before the court, the one at issue in this appeal, was devised in consultation with the Attorney General of the United States. It was designed specifically to meet the requirements imposed by the district court's June 12 opinion.[12] The United States, after careful study, concluded that the revised 4-2-3 plan satisfied the Act—including the "discriminatory purpose" test—and that it "substantially compl[ied] with the requirements set out by [the District] Court . . . ." App. 85a. The Attorney General urged the court to grant Section 5 preclearance. App. 87a.

Against this backdrop, a holding that the 4-2-3 election plan had a discriminatory purpose would be plain error.

C. The District Court Improperly Conditioned Preclearance of the Proposed Election Plan Upon Adoption of a Plurality-Win Provision for Two At-Large Seats.

The 4-2-3 election plan proposed by Port Arthur and the United States dissipates to the extent possible the dilution of black voting power caused by the City's expansion. The plan gives blacks representation reasonably equivalent to their political strength in the new City. Nevertheless, the district court conditioned

---

[12] The factors that led the district court to conclude that the discarded 8-0-1 and 4-4-1 plans had been adopted for an illicit purpose have no bearing on the question whether the City was motivated by an impermissible intent when it adopted the present plan at a later time and in vastly different circumstances.

preclearance upon the adoption of a plurality-win provision for the two non-mayoral at-large council seats. By imposing this additional requirement for Section 5 approval, the court exceeded its authority under the Voting Rights Act. "As long as the [election system] fairly reflects the strength of the Negro community as it exists after the annexation, [the court] cannot hold . . . that such an annexation is nevertheless barred by § 5." *City of Richmond* v. *United States*, 422 U.S. 358, 371 (1975).

In his review of the 4-2-3 plan, the Attorney General specifically addressed the question whether a plurality-win condition should be imposed on the two non-mayoral at-large seats. Based on his familiarity with voting in Port Arthur, he concluded that the absence of such a provision did not rise "to a level of significance which would justify denying Section 5 preclearance." App. 87a.[13] This Court routinely "shows great deference to the interpretation given the statute by the officers . . . charged with its administration." *Perkins* v. *Matthews*, 400 U.S. 379, 391 (1971), *quoting Udall* v. *Tallman*, 380 U.S. 1, 16 (1965). It is also significant that two of the four intervenor-defendants in the district court also approved the plan. *See, e.g., City of Petersburg* v. *United States*, 354 F. Supp.

---

[13] The Attorney General is required to apply the same standard as the district court when he reviews Section 5 submissions:

> [T]he Attorney General shall make the *same determination* that would be made by the court in an action for a declaratory judgment under Section 5: whether the submitted change has the purpose or will have the effect of denying or abridging the right to vote on account of race . . . .

46 Fed. Reg. 870, 878 (1981) (to be codified at 28 C.F.R. § 51.39) (emphasis supplied).

1021, 1031 (D.D.C. 1972), *aff'd without opinion,* 410 U.S. 962 (1973).

The effect of the district court's unexplained ruling in this case is to hold that a majority-vote requirement is, *per se,* a violation of the Voting Rights Act. There is no support whatever in precedent for such an extreme position. Given the sufficiency of the 4-2-3 plan, the lower court's imposition of a condition not required by the statute merits review by this Court.

D. The District Court Failed to Give Proper Weight to the Attorney General's Approval of the Proposed Election Plan.

The Attorney General concluded that the 4-2-3 councilmanic election plan substantially complied with the requirements of the Voting Rights Act and with the district court's memorandum opinion of June 12, 1981. He reached this determination only after years of examining voting in Port Arthur and after rejecting four plans previously proposed by the City.[14] His judgment is supported by the obvious improvement the 4-2-3 plan will effect in black voting rights in Port Arthur: In the past, blacks have never been able to elect more than one member to the council, whereas under the proposed plan they will assuredly control three seats and exert substantial influence over a fourth.

Under Section 5, the Attorney General "is constituted champion of the interests of minority voters . . . ." *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey,* 430 U.S. 144, 175 (1977) (Brennan, J. concurring in part). He has authority

[14] The four plans found unsatisfactory by the Attorney General were: the at-large seven and eight member proposals, the 4-4-1 proposal, and the 4-2-3 plan without residency districts.

equal to that of the U.S. District Court for the District of Columbia to approve voting changes under the Act. 42 U.S.C. § 1973c (1976). *See also* 46 Fed. Reg. 870, 878 (1981). According to well-established precedent, the district court should have given "considerable deference to the judgment of the Attorney General" that the 4-2-3 election plan complied with the "remedial objectives" of the Act. *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey,* 430 U.S. at 175. *See also City of Petersburg* v. *United States,* 354 F. Supp. 1021, 1031 (D.D.C. 1972), *aff'd without opinion,* 410 U.S. 962 (1973); *Perkins* v. *Matthews,* 400 U.S. 379, 390-91 (1971). Instead, the district court erred by giving no weight to the Attorney General's interpretation of the statute.

CONCLUSION

For the reasons submitted herein, this Court should note probable jurisdiction.

Respectfully submitted,

ROBERT Q. KEITH
MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Building
Beaumont, Texas 77701
(713) 835-5011
Counsel of Record for Appellant

JAMES DOUGLAS WELCH
FRAN M. LAYTON
WALD, HARKRADER & ROSS
1300 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 828-1200

GEORGE WIKOFF
City Attorney of Port Arthur
P.O. Box 1089
Port Arthur, Texas 77640
Attorneys for Appellant

October 13, 1981

Appendix

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-0648

CITY OF PORT ARTHUR, TEXAS, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *et al.*, *Defendants*.

Before J. SKELLY WRIGHT, Circuit Judge, JOHN LEWIS SMITH, JR., District Judge, and CHARLES R. RICHEY, District Judge.

Robert Q. Keith, Mehaffy, Weber, Keith & Gonsoulin, Beaumont, Tex., for plaintiff, with whom were George Wikoff, City Attorney, Port Arthur, Tex., and James D. Welch and Greer S. Goldman, Wald, Harkrader & Ross, Washington, D.C.

J. Gerald Hebert and Robert S. Berman, Attorneys, U.S. Department of Justice, Washington, D.C., for defendant United States of America, with whom were Drew S. Days, Assistant Attorney General, and Gerald W. Jones and Paul F. Hancock, Attorneys, U.S. Department of Justice, Washington, D.C.

Elizabeth K. Julian and Michael M. Daniel, East Texas Legal Services, Dallas, Tex., for intervenor-defendants Abraham Douglas, et al., with whom was Norman J. Chachkin, Lawyers' Committee for Civil Rights Under Law, Washington, D.C.

Filed June 12, 1981

MEMORANDUM OPINION

CHARLES R. RICHEY, District Judge

This is an action for declaratory relief brought under section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (Supp. 1974-1980).[1] Unless a state or political sub-

[1] Section 5 provides:

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)2 of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard,

division receives the approval of the Attorney General of the United States for a change in its voting standards, practices or procedures, section 5 requires that the entity must demonstrate to a three-judge panel of the United States District Court for the District of Columbia that the change it seeks to enforce has neither the purpose nor effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Plaintiff City of Port Arthur, Texas, has filed this suit in order to obtain a declaration upholding the validity of several voting changes occasioned by the expansion of the boundaries of the City, by the City's adoption of two new electoral plans for the enlarged community, and by the establishment of elected advisory councils for two of the added areas.

---

practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

With the consent of the parties,[2] evidence consisting of numerous depositions, exhibits, and the in-court testimony of several witnesses was initially presented to a single judge. Complete copies of the record were then distributed to the two other judges. Ultimately, the full three-judge court heard oral argument on all aspects of the case.

Upon consideration of the entire record herein, we conclude that plaintiff's request for a declaratory judgment must be denied. Although we are convinced that the territorial expansion was accomplished without a discriminatory purpose, the subsequently adopted election plans were fatally infected by such an intent. Moreover, the implementation of any of the voting schemes presented would most probably have the effect of abridging the electoral rights of Port Arthur's minority communities. With respect to the advisory councils, we find the absence of a discriminatory purpose and the presence of a discriminatory effect. The opinion which follows sets forth our findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

I. FACTUAL FINDINGS

A. General Background

Plaintiff City of Port Arthur ("Port Arthur" or "the City") is a municipality located on the southeastern boundary of the State of Texas. It lies approximately 90 miles east of Houston in the southern portion of Jefferson County on the salt-grass marshland adjacent to the Gulf of Mexico. Sabine Lake and the Sabine-Neches waterway border the City on the south while the municipalities of

---

[2] Plaintiff City of Port Arthur originally sued the United States of America for a declaratory judgment. Shortly thereafter, four black residents of Port Arthur, Abraham Douglas, Elgie Jenkins, Walter Mosely, and Willie Lewis, were granted permission to intervene as party-defendants.

Nederland, Groves, and Port Neches pose a barrier to the north and east. West of Port Arthur is a wildlife management area and several large petroleum complexes. Due to the location of the City and the resources at hand, the population is primarily engaged in oil refining, petrochemical manufacturing, sea-faring, and related occupations.[3]

Within the general area occupied by Port Arthur are four communities which are of central concern in this litigation. The Town of Lakeview ("Lakeview"), the City of Griffing Park ("Griffing Park"), and the City of Pear Ridge ("Pear Ridge") are all incorporated entities covering less than one square mile each. Lakeview overlooks Lake Sabine and is surrounded on all sides by Port Arthur. Situated one mile to the north is Griffing Park which edges Groves on the east and Pear Ridge on the north-west but is otherwise enveloped by the plaintiff City. Aside from its shared border with Griffing Park, Pear Ridge is totally enclosed by Port Arthur. Finally, there is a fourth unincorporated area known as Sabine Pass which is situated eight miles to the south of the City.[4]

According to the figures published by the United States Bureau of Census, the total population of the City of Port Arthur has been decreasing from 66,676 in 1960 through 57,371 in 1970 to 54,485 in 1980.[5] Simultaneously, the per-

---

[3] Amended Joint Statement of Undisputed Material Facts ("A.J.S.") ¶¶ 2, 88, 89. *See* Appendix A. References to "north" in this opinion should technically be to "north-north-west"; all other directions should be adjusted accordingly.

[4] *See* Appendix A.

[5] The 1960 population statistics were obtained from A.J.S. ¶ 7. The demographic data for 1970 was derived from A.J.S. ¶¶ 9-10, 17-18, 25-26, 29, 68-69 and Exhibit ("Exh.") 95. Finally, although the parties have submitted estimates for 1979 and 1980 prepared by demographers Lyle Vickers and Thomas Hofeller respectively,

centage of the municipal population comprised by blacks has increased significantly; the black proportion of the

---

see Exh. 49, 52, 87, 112-13, the Court must rely upon "the most current available population data," the official figures provided in the 1980 Census. *City of Rome, Georgia v. United States*, 100 S. Ct. 1548, 1567 (1980). The 1980 Census was first published after trial, but, with the consent of the parties and in accordance with the law, we take judicial notice of that information. *See Mitchell v. Rose*, 570 F.2d 129, 132 n.2 (6th Cir. 1978), *rev'd on other grounds sub nom. Rose v. Mitchell*, 443 U.S. 545 (1979); *Goins v. Allgood*, 391 F.2d 692, 697 (5th Cir. 1968); Fed. R. Evid. 201(f); Defendant United States of America's Request to Take Judicial Notice of the 1980 Census (filed April 3, 1981) ("Defendant's Request to Take Judicial Notice"); Plaintiff's Reply to Defendant's Supplemental Pleading Regarding 1980 Census at 1 (filed April 22, 1981) ("Plaintiff's Reply to Defendant's Supplemental Pleading").

The 1970 and 1980 Census statistics break down as follows:

	Port Arthur	*Pear Ridge*	*Lake-view*	*Sabine Pass*	*Total*
		1970 Census			
Total	57,371	3,697	3,567	1,143	65,778
Black	22,994	2	1	100	23,097
% Black	40.01%	0.05%	0.03%	8.75%	35.11%
Mex-Am	3,809	411	309	0	4,529
% Mex-Am	6.64%	11.12%	8.66%	0.00%	6.88%
VAP	37,636	2,405	2,474	696	43,211
Black VAP	13,033	2	0	61	13,096
% Black VAP	34.62%	0.08%	0.00%	8.76%	30.31%
		1980 Census			
Total	54,485	3,091	2,917	501	60,994
Black	24,630	12	68	31	24,741
% Black	45.21%	0.39%	2.33%	6.19%	40.56%
Mex-Am	3,120	353	352	18	3,843
% Mex-Am	5.73%	11.42%	12.07%	3.59%	6.30%

In compiling the above chart, the Court encountered several problems. First, the only VAP figures available are those presented in the 1970 Census; neither the estimates nor the 1980 Census in-

population was 30.79% in 1960, 40.01% in 1970, and 45.21% in 1980. In addition, several other minorities have always contributed a small fraction of the population. Between 6 and 7% of all Port Arthurians, for example are of Spanish origin. Although current statistics as to the number of individuals of voting age in each of these groups are unavailable, the 1970 Census revealed that the total voting-age population ("VAP") was 37,636 of whom 13,033 or 34.62% were black.

By contrast, the four communities mentioned above have far fewer and predominantly white residents.[6] The total population of Pear Ridge, Lakeview and Sabine Pass, for

---

clude such information. Second, the 1970 VAP count for Sabine Pass was not to be found in the record, and, therefore, we have extrapolated from the relevant numbers. More specifically, the total VAP for Sabine Pass was calculated by subtracting the VAP's for Port Arthur, Pear Ridge and Lakeview from that of the expanded City, and then that total was multiplied by the 8.75% of Sabine Pass population comprised by blacks. The third problem results from the difference in the 1980 Census analyses prepared by defendant United States and plaintiff. *See* Defendant's Request to Take Judicial Notice; Plaintiff's Reply to Defendant's Supplemental Pleading. We agree with the United States that the 201 individuals in census tracts 51.99, 66.99 and 116.99 who are crew members on vessels in the Port of Port Arthur should be excluded from our computations because of the improbability that they would be present to vote in a municipal election. *See* affidavit of Robert S. Berman at 4 (April 3, 1981). However, we do not accept plaintiff's suggestion that the residents of Spanish origin be subtracted from the "white" population. *See* affidavit of Lyle Vickers at 3 (April 20, 1981). It is true that Port Arthurians of Spanish descent appear to be double counted, but the Court does not believe that such individuals are always included in the "white" population. Census tract 57, for example, contains 7 persons of Spanish origin, but it has only 4 white inhabitants.

[6] *See* note 5 *supra*. Griffing Park housed 2,075 people of whom 4 were black in 1970.

example, was 8,407 in 1970 and only 6,509 in 1980.[7] In those same areas, blacks numbered 103 or 1.23% and Mexican-Americans, 720 or 8.56% in 1970; by 1980, there were 111 or 1.71% black and 723 or 11.11% Hispanic citizens. Individuals of voting age totalled only 5,575 of whom 63 or 1.13% were black in 1970.

B. Historical Background of Port Arthur

1. Political history to 1963

The City of Port Arthur was founded in 1898, and it has operated under its own Charter since March 8, 1932, in accordance with the so-called "home-rule amendment" of the Texas Constitution.[8] City officials were elected by at-large vote until 1954.[9] Then between 1954 and 1963, Port Arthur adopted the commission-manager form of government and the single-member district or ward system.[10] Each of the seven commissioners was required to be a resident of the district which he or she represented, and each was elected by only the qualified voters in the district. The commissioners served two year terms with four of the commissioners elected at one time and the remaining three elected the following year. It was necessary that candidates receive a majority of the vote in order to get elected. Following each election, one of the seven commissioners was selected by the commission to serve as mayor.

Throughout the period when this single-member district plan was in effect, the districts were essentially drawn on a north-south axis parallel to the named avenues of the

---

[7] Griffing Park has been excluded from these totals because it never joined with the City of Port Arthur as did the other areas in question.

[8] A.J.S. ¶¶ 87, 93-94.

[9] A.J.S. ¶ 95.

[10] A.J.S. ¶ 3.

City.[11] The black population was heavily concentrated in District 1, the area west of Houston Avenue,[12] and the commission regularly included a single black member elected from that district between 1954 and 1963.[13] Beginning with the construction of the first urban renewal project in 1957, a significant number of blacks began to move eastward across Houston Avenue into the traditional white residential areas which constituted the other election districts.[14] By 1960, it appeared that District 2 was going to become as predominantly black as District 1.[15]

In 1963, however, the results of a Charter change referendum compelled the City to alter the form of government.[16] From that time on, Port Arthur has been governed by a seven-member council and a professional manager who operates the City and carries out the policies of the City Council.[17] According to the so-called 6-0-1 plan,[18] six of the council members are each required to live in newly-

---

[11] Trial Transcript I, 95-96, 98-99 (November 24, 1980) (testimony of George Dibrell). The trial transcript in this proceeding was not paginated consecutively over both days of trial. Consequently, the Court will refer to the two volumes of the transcript in the following manner: Tr. I for the transcript of November 24, 1980, and Tr. II for the transcript of November 25, 1980. *See also* Exh. 121.

[12] United States Preliminary Proposed Findings of Fact and Conclusions of Law ("U.S.P.F.") ¶ 31 (admitted); Evans Deposition ("Dep.") 7, 10, 12; Freeman Dep. 5-6; Guidry Dep. 5, 20.

[13] Guidry Dep. 5-6, 9-10.

[14] A.J.S. ¶ 30; U.S.P.F. ¶¶ 32-34 (admitted); Tr. I, 96-98 (testimony of George Dibrell).

[15] Tr. I, 98 (testimony of George Dibrell).

[16] A.J.S. ¶¶ 4, 101.

[17] A.J.S. ¶¶ 4, 104.

[18] A.J.S. ¶¶ 4, 105-08, 113.

drawn residency districts including the old District 1, three new districts drawn along an east-west axis, and two additional districts covering the large area to the north.[19] In order to win a seat, however, a candidate has to be elected by a majority of all of the qualified voters in the City. The seventh position, the mayoral place is similarly filled by an at-large contest, but the mayor is not required to reside in any particular district. Although the mayor bears certain ceremonial and "political" responsibilities not shared by the other members of the Council, he casts a vote on each matter under consideration just as his fellow officials do.[20] Each year, three council members are elected, and the three others along with the mayor are voted on the following year.

This Charter amendment was overwhelmingly approved by the citizens of Port Arthur who cast 6,829 votes in its favor and lodged only 1,022 votes against it; blacks and whites alike supported the measure.[21] In an effort to explain the motivation for this change, plaintiff demonstrated that Port Arthur had been plagued by widespread corruption while the single-member district plan was extant.[22] Whether or not the ward system actually spawned the illegal activities, the citizens of Port Arthur believed that there was such a connection.[23] No justification was offered, however, for the redrawing of district boundaries along east-west lines. The record bears witness to the fact that

---

[19] *See* Exh. 122, 124.

[20] Exh. 133, Part 20 at 7-8; Sadler Dep. I (October 24, 1980), 114-15.

[21] A.J.S. ¶¶ 102-03; Tr. I, 28-29 (testimony of George Dibrell); Guidry Dep. 78; Sadler Dep. I, 184-85.

[22] Exh. 148; Tr. I, 16-17 (testimony of George Dibrell); Hayes Dep. 10-11; Sadler Dep. I, 181-87.

[23] Tr. I, 16-17 (testimony of George Dibrell); Guidry Dep. 79; Hayes Dep. 10-12; Sadler Dep. I, 181-85.

this redistricting had the effect of maintaining the concentration of blacks in District 1 while simultaneously fragmenting the growing black population east of Houston Avenue in Districts 2, 3, and 4 by combining it with the larger white population on the east side of the City.[24] Consequently, a minority candidate from the western portion of District 2, 3, or 4 would face a white opponent from the east.

2. 1963 to 1977

Under the at-large system, Port Arthur received national recognition when nominated as an All American City in 1970 and when given the award of the National Municipal League in 1973.[25] Nevertheless, racial tension festered beneath the surface. As blacks moved east across Houston Avenue, whites moved further east and even out of the City into the surrounding townships.[26] Between 1960 and 1970, the non-black population in Port Arthur diminished from 46,145 to 34,377.[27] There is some suggestion in the record that the outmigration was motivated by the decreased hiring of the local oil refineries and the high cost of living in Port Arthur,[28] but these factors would have impacted on blacks as much as whites and there is no evidence that blacks were leaving the City. On the other hand, there was overwhelming testimony that the white exodus was prompted by racial considerations. A 1969 study commissioned by the municipal government revealed that the most frequent negative comment of Port Arthurians with respect

---

[24] Tr. I, 99 (testimony of George Dibrell). *See* Exh. 122, 124.

[25] Exh. 133, Part 8 at 24; Exh. 144.

[26] Evans Dep. 8-9, 12; Green Dep. 7-8; Sadler Dep. II (November 6, 1980), 7-11; Vickers Dep. II (October 23, 1980), 70-73.

[27] A.J.S. ¶ 7; Exh. 95.

[28] Evans Dep. 41-5; Sadler Dep. II, 7.

to their home was "too many minority group members."[29] Mayor Bernis Sadler and the City's demographic expert, Lyle M. Vickers, both attributed the outward movement to the court-ordered desegregation of the schools in 1970.[30] In 1973, the Port Arthur City Council received another study from a Chicago-based consulting group, the Public Administration Service ("PAS"), which also concluded that race was a reason for the outmigration of whites.[31] Thus, since 1960, Port Arthur appears to have suffered a classic case of "white flight".

On December 29, 1974, the situation was exacerbated when a black youth named Clifford Coleman was shot to death by a white Port Arthur policeman while escaping from police custody.[32] Plaintiff asserts that Coleman was escaping from "jail" as opposed to "police custody." Semantics aside, it is undisputed that the black youth was being booked for using abusive language when he broke away from the police officer who shot him as he ran.[33] The level of racial tension in the City increased significantly following the incident, and, for the first time, there was a community-wide reaction to what was perceived as a racially discriminatory act.[34] The black population of Port Arthur conducted rallies, held marches and attended community-wide meetings. Several businesses were burned, and at least one family armed itself in preparation for a conflict.[35] More peaceful protests included the

---

[29] A.J.S. ¶ 31.

[30] Sadler Dep. II, 7-8; Vickers Dep. II, 70-73.

[31] Exh. 133, Part 8; Greisinger Dep. 19-20, 30.

[32] U.S.P.F. ¶ 40 (admitted in part).

[33] *See, e.g.*, Exh. 145 at 20; Evans Dep. 50-51.

[34] A.J.S. ¶¶ 35-37; U.S.P.F. ¶¶ 41, 43 (admitted).

[35] U.S.P.F. ¶ 42 (admitted); Scott Dep. 8.

resignation of all the black members of the Port Arthur Chamber of Commerce and the refusal of a local black football star, Joe Washington, to accept an award from the Chamber.[36]

Although the tension level subsided somewhat in the years following the Coleman shooting, the effects of the incident continued to be felt in Port Arthur.[37] The municipal elections of April 2, 1977, for example, evidenced the unremitting racial hostility. Four council seats including that of the mayor were in contention, and in each race a white candidate confronted a black.[38] As part of their campaign effort against the slate of black candidates, members of the Port Arthur City Council placed a series of three full-page advertisements in the *Port Arthur News* on the three days preceding the election.[39] The ads warned about the efforts of the Rev. William Land "to rally the local black community to gain control of the city government." Specifically named as associates of Rev. Land were two black candidates; A. Z. McElroy was said to have brought him to Port Arthur and Paul Strawder was allegedly president of his congregation. Plaintiff City of Port Arthur subsequently characterized these ads as admonitions of an "outside takeover,"[40] but the language of the ads undeniably referred to a takeover by the local black community. Furthermore, each of the black councilmanic candidates in the 1977 election was a long-time resident of Port Ar-

---

[36] A.J.S. ¶ 38; Spencer Dep. 26.

[37] Evans Dep. 17-19, 53, 61; Hall Dep. 24; Huber Dep. 11-12; Sadler Dep. I, 101-02; Scott Dep. 10-11.

[38] A.J.S. ¶¶ 39-40.

[39] U.S.P.F. ¶ 55 (admitted); Exh. 9.

[40] U.S.P.F. ¶ 55 (admitted); Tr. I, 84-87 (testimony of George Dibrell).

thur.[41] Only Rev. Land was an "outsider," but he was not running for office.

In the ensuing election, the black slate narrowly lost every race.[42] By all accounts, the election results reflected severely polarized racial bloc voting; the phenomenon which occurs when white citizens vote for white candidates and black citizens cast their ballots for blacks.[43]

3. Consolidation with Pear Ridge and Lakeview

Almost immediately after the councilmanic elections of April 2, 1977, there was considerable discussion of the idea of consolidating Port Arthur with the surrounding white communities. The economic and administrative need for such action had been recognized at least since the 1940's.[44] Between 1940 and 1950, the City annexed two areas in order to increase the municipal population, and the people of Port Arthur supported an unsuccessful effort to annex the area now known as the City of Groves. In the next decade, Port Arthur annexed several areas including Port Acres, El Vista, Fairlea, Highland Heights and Foster Estates. The City again voted to consolidate with Groves in 1959,[45] but that effort and a 1956-57 campaign to join Port Arthur with Pear Ridge, Lakeview and Griffing Park failed. Among the factors motivating these efforts in the 1950's were the City's desires to increase its population for the 1960 Census, to facilitate construction of a seawall for the entire

---

[41] Exh. 10; McElroy Dep. 4.

[42] U.S.P.F. ¶ 56 (admitted); Exh. 8.

[43] U.S.P.F. ¶ 56 (admitted); *See, e.g.*, Tr. I, 207-08 (testimony of Joseph Zimmerman); Cotrell Dep. 20-21; Davidson Dep. 12-13; McManus Dep. I (October 6, 1980), 45.

[44] Exh. 16-17, 24; Tr. I, 12-15 (testimony of George Dibrell); Vickers Dep. I (October 6, 1980), 12-27.

[45] Exh. 149.

area, to improve streets and police and fire protection, and to attract business. Although the City continued its search for ways to increase its population, there was no expansion of the municipal boundaries between 1960 and 1970.[46]

In 1973, the Port Arthur City Council received the abovementioned PAS report. Entitled "Intergovernmental Relations in the Greater Port Arthur Area," the study recommended that "the City of Port Arthur, and the surrounding municipalities should be consolidated to create a single governmental unit."[47] In order to accomplish such a reorganization, PAS counseled that "an intensive and deliberate effort to develop a broad consensus on the best available alternative to the status quo" was required. After this "painstaking research and proposal development," it would be necessary to enlist popular support by "a variety of promotional methods, suited to the diverse compositions of the electorate."

By 1975, members of the Port Arthur City Council began receiving inquiries about consolidation from private individuals residing in neighboring communities.[48] Specifically, City Manager Dibrell was approached by Ernest Askew, a resident of Pear Ridge, several times beginning in 1975 and continuing through April, 1977. According to Mr. Askew, the rising sewer and water rates in Pear Ridge and the increasing taxes sparked interest in consolidation with Port Arthur around 1975 or 1976.[49] Ron Gates also relayed the sentiment in Pear Ridge to Mr. Dibrell and Mayor Sadler in April, 1977, if not earlier. An inhabitant of Griffing Park, Brenda Drago, apparently contacted the City

---

[46] Vickers Dep. I, 27-29.

[47] Exh. 133, Part 8 at 67. *See also* A.J.S. ¶ 32.

[48] Tr. I, 46-48, 108-09 (testimony of George Dibrell); Sadler Dep. I, 53, 224.

[49] Askew Dep. 4-6.

Manager and the Mayor sometime after 1975. Finally, there was testimony that a movement in favor of consolidation began in Lakeview after 1975.[50] At that time, Cecil Hamilton and Lewis Foster talked with Mayor Sadler.

Despite the unqualified recommendation of PAS and the urgings of residents from the surrounding townships, no action was taken by the Port Arthur municipal government. The PAS consulting group was not contacted again until the time of trial, nor was any other study of consolidation commissioned before May, 1977.[51] The subject of consolidation was not even mentioned in the official minutes of the Port Arthur City Council from March 8, 1976, to April 4, 1977.[52]

Once the results of the April 2, 1977, municipal elections were known, however, the Port Arthur City Council pursued the issue of consolidation vigorously. On April 11, 1977, at the very next regular meeting of the Council, the former mayor of Port Arthur, R. B. McCollum, informed the members that "it is essential to unite and consolidate now more than ever before."[53] Later in the month, Port Arthur Mayor Sadler and City Manager Dibrell took an unprecedented action[54] by arranging three separate meetings with members of the all-white Pear Ridge, Lakeview and Griffing Park city councils at the Holiday Motel Restaurant in order to discuss citizen interest in consolidation and to explain the benefits which would accrue.[55]

---

[50] Hamilton Dep. 8-11, 14, 16-17, 23.

[51] A.J.S. ¶ 33; Greisinger Dep. 32.

[52] A.J.S. ¶ 41.

[53] Exh. 130.

[54] Hammond Dep. 12; Lindsey Dep. 43; Moser Dep. 24; Shaw Dep. 7.

[55] A.J.S. ¶ 42; U.S.P.F. ¶ 60 (admitted); Beckom Dep. 36-41; Hammond Dep. 10; Kleespies Dep. 14-17; Lindsey Dep. 35-46.

Whether or not the racial composition of Port Arthur and the political situation there were mentioned at those dinner meetings is the subject of considerable debate. Most of those who attended the meetings do not recall a discussion of the April 2, 1977, Port Arthur elections nor of race in general, however, several individuals remember references to the changing racial make-up of the City and the need to "stabilize" the population.[56] According to James Shaw, a member of the Griffing Park Council, Messrs. Sadler and Dibrell even declared that there was a possibility that blacks would take over the Port Arthur City Council,[57] but Mr. Dibrell later explained that such a statement, if any, related only to Rev. Land.[58] Recognizing that memory lapses with the passage of time and that many of these Town officials are "interested witnesses" with good reason to conceal the truth,[59] we conclude that there was some mention made of the racial situation in Port Arthur. Yet, we are not prepared to stand by the testimony of Mr. Shaw when no other witness corroborates it.[60] In all proba-

---

[56] Beckom Dep. 46-47, 49-50, 93; Goff Dep. 20; Kleespies Dep. 17; Shaw Dep. 10-11.

[57] Shaw Dep. 11-15.

[58] Tr. I, 76, 87 (testimony of George Dibrell).

[59] As leaders of the predominantly white communities which stood to gain much by consolidation with Port Arthur and as participants in the actual consolidation drive, these individuals certainly qualify as "interested witnesses" whose testimony is to be discounted. *See City of Richmond v. United States*, 422 U.S. 358, 377 (1975); *Hale County v. United States*, 496 F. Supp. 1206, 1217 (D.D.C. 1980).

[60] In their deposition testimony, Denise Hensley and Douglas Bedell, two reporters for the *Beaumont Enterprise*, also described statements allegedly made at the Hotel meetings by Mayor Sadler and City Manager Dibrell to the effect that consolidation was necessary in order to avert a black takeover of Port Arthur. *See also* Exh. 1, "Closed Talks Air South County Merger," *Beaumont*

bility, the Mayor and the City Manager merely made subtle reference to the racial composition of Port Arthur, but that was undoubtedly sufficient to remind the long-time residents of southern Jefferson County of the racial advantages of consolidation. Thus, race was included among the several factors cited at the dinner meetings in favor of a merger with the surrounding municipalities.

During the weeks which followed, Port Arthur officials participated in an active effort to provide information regarding consolidation to the surrounding municipalities because Texas law required the smaller city to first petition and vote for consolidation.[61] On May 9, 1977, the City Council authorized Mr. Dibrell to investigate the cities involved and to prepare a detailed statistical report on the cost of municipal services, local ad valorem taxes, home insurance costs, the positions and salaries of municipal employees, and other subjects.[62] The resulting "packet of information pertaining to the proposed consolidation" was then distributed in the neighboring communities.[63] It included a draft petition to be circulated in the affected township in order to initiate consolidation and a draft ordinance which would provide for the establishment of an advisory council from each of the three cities to the Port Arthur City Council. Throughout the summer months, Port Arthur City officials attended a series of public meetings in Pear Ridge,

---

Enterprise, May 5, 1977, at 1. By Order of December 17, 1980, however, this Court held that the deposition testimony of Ms. Hensley and Mr. Bedell and the article in the *Beaumont Enterprise* authored by them contained hearsay which was inadmissible to prove the truth of the matter asserted. Therefore, Mr. Shaw's statements are effectively without corroboration in the record.

[61] Plaintiff's Proposed Findings of Fact and Conclusions of Law ("P.P.F.") ¶¶ 13, 20 (admitted); U.S.P.F. ¶ 72 (admitted).

[62] A.J.S. ¶ 46; Exh. 84.

[63] U.S.P.F. ¶¶ 63-64 (admitted); Exh. 5.

Lakeview and Griffing Park to provide explanations and additional information.[64]

Plaintiff City of Port Arthur offered the surrounding municipalities a series of inducements to consolidate. One of the principal attractions held out to the adjacent communities was Port Arthur's recently decreased tax rate.[65] Prior to 1977, the municipal property tax on homeowners was significantly higher than that of its neighbors because the City Charter precluded the annexation of adjoining industrial properties. Port Arthurians amended the Charter in 1975, however, so as to permit the necessary annexations. By 1977, after the City had negotiated very favorable contracts involving substantially increased payments in lieu of taxes from the industrial property owners, the tax rate was greatly lowered. Therefore, it became possible for Port Arthur to promise the surrounding townships a reduction in their property taxes and a five-year freeze on the 1976 property assessments in use at the time.[66]

Consolidation also provided a vehicle for the neighboring areas to resolve various problems relating to water and sewage services.[67] For many years, each township had contracted with Port Arthur for these services, but legal disputes had developed over the prices charged. In addition, state and federal regulations implemented in 1976 required vast revisions to the water and sewer facilities in each city. Pear Ridge, Lakeview and Griffing Park did not have the financial resources to make the necessary capital improve-

---

[64] A.J.S. ¶ 47.

[65] Tr. I, 32-36 (testimony of George Dibrell); Sadler Dep. I, 208-11.

[66] Exh. 5; Beckom Dep. 94; Dibrell Dep. 84-88; Goff Dep. 9; Sadler Dep. I, 167-68.

[67] A.J.S. ¶¶ 43-45; P.P.F. ¶¶ 10-12 (admitted); U.S.P.F. ¶¶ 68-69 (admitted in part); Tr. I, 36-39 (testimony of George Dibrell).

ments. Although Port Arthur had the funds with which to comply with the new regulations, it was unwilling to renew the disputed and disadvantageous service contracts. If the municipalities consolidated, however, Port Arthur would furnish the capital for the required improvements and would absorb by operation of Texas law the legal liabilities owed to it.

Other municipal services were offered to the three townships as part of the consolidation package. The deteriorating firefighting units in the outlying communities were to be joined with Port Arthur's full-time professional fire department; the fragmented police protection was to be unified into a single, enlarged police force; and the public library was to be made available to everyone at no charge.[88] Little increase in cost was anticipated because of the location of existing fire stations and the size of the current police and firefighting forces. Without consolidation and an increased tax base, however, the City announced that it was not economically feasible to continue providing the above services.

Finally, Port Arthur City officials pledged that they would establish advisory councils to the City Council from Pear Ridge, Lakeview and Griffing Park.[89] For a five-year transition period commencing on the effective date of the consolidation, the elected members of these councils would have direct access to and influence on the decision-making process of the municipal government. Although individuals and groups from other areas of the City were free to contact members of the City Council, no official advisory councils were created to represent those areas.

The benefits of consolidation did not inure solely to the neighboring communities. Port Arthur, for example, was extremely interested in maintaining a population in excess

---

[88] A.J.S. ¶ 49; Tr. I, 52-4, 77-78 (testimony of George Dibrell); Sadler Dep. I, 60.

[89] A.J.S. ¶ 48; Sadler Dep. I, 70-73.

of 50,000 so as to remain entitled as a matter of right to funds from federal agencies including the Department of Housing and Urban Development ("HUD").[70] Were the population to decrease below the 50,000 level, HUD would diminish the amount of the direct grant by one-third each year; in the fourth year, the City would have to compete with other applicants for discretionary awards. Since 19 5, the City had automatically received almost $10,000,000 in federal grants, but there was evidence that the municipal population was approaching the 50,000 mark. Between 1960 and 1970, the number of Port Arthurians had declined from 66,676 to 57,371. Before the dinner meetings at the Holiday Motel, City officials were in receipt of an estimate from the Office of Revenue Sharing indicating that there were only 53,557 residents in 1976 and population data published by the R. L. Polk Co. for the years 1972-75. In order to ensure federal funding for the foreseeable future, Port Arthur sought to consolidate with the surrounding municipalities. Having already annexed all of the adjacent black communities, the City turned to Pear Ridge, Lakeview and Griffing Park.

An increase in population also had other advantages for Port Arthur. Although the City would be required to provide services to the new residents, it was anticipated that the additional cost would be minimal and greatly outweighed by the increased tax revenue. The City Manager suggested that the economies were so apparent that it was unnecessary to prepare a detailed cost-benefit analysis.[71] Furthermore, Port Arthur hoped that the increased visibility resulting from consolidation would attract new businesses and thereby create new jobs.[72]

---

[70] P.P.F. ¶¶ 14-17 (admitted); Tr. I, 39-41 (testimony of George Dibrell); Vickers Dep. I, 34-39, 51-52.

[71] Tr. I, 53-54 (testimony of George Dibrell); Dibrell Dep. 39-41, 102-03.

[72] Exh. 3, 7, 48; Sadler Dep. I, 234; Spencer Dep. 19-20.

In June, 1977, separate petitions calling for an election on the issue of consolidation with Port Arthur were circulated and signed by citizens of Pear Ridge, Lakeview and Griffing Park.[73] At the referenda elections held on August 13, 1977, a majority of the citizens in Pear Ridge and Lakeview voted for consolidation, but the residents of Griffing Park voted against it.[74] City officials of Port Arthur including Mayor Sadler then began campaigning for consolidation within the City.[75] By a vote of 6,449 to 1,223, Port Arthurians approved consolidation with Pear Ridge in a referendum election held on November 8, 1977. At the same time, 6,353 residents of the City voted for consolidation with Lakeview, and 1,181 voted against it.[76] Although the white community almost unanimously supported the merger, black voters were divided on the issue; the election results did not evidence severe racial polarization.[77]

Certified copies of the results of the consolidation referenda held in Port Arthur, Pear Ridge and Lakeview were filed with the Texas Secretary of State on December 1, 1977, and the consolidation was officially consummated.[78] Henceforth, the City of Port Arthur was responsible for governing a population which was, according to 1980 census statistics, increased by 6,008 people including 80 blacks to a total of 60,493 of whom 24,710 or 40.85% were black and

---

[73] P.P.F. ¶ 21 (admitted).

[74] A.J.S. ¶¶ 50-51.

[75] U.S.P.F. ¶¶ 75-76 (admitted).

[76] A.J.S. ¶¶ 52-53.

[77] Exh. 8, 170. According to plaintiff's expert, Dr. Susan McManus, the polarization scores for the special referendum election on consolidation with Pear Ridge and Lakeview were 56.3 and 56.4, respectively. Exh. 170. None of the expert witnesses who testified in this case would consider that level of racial polarization to be severe. *See* note 136 *infra*.

[78] A.J.S. ¶ 56.

3,825 or 6.32% were Hispanic.[79] The areas formerly known as Pear Ridge and Lakeview contributed over 16% of the whites in the enlarged community and less than 1% of the blacks.[80]

4. The 7-0-1 plan

On November 28, 1977, the Port Arthur City Council fulfilled its promise to the Pear Ridge and Lakeview electorate by adopting Ordinances 77-118 and 77-119 which established Pear Ridge and Lakeview Advisory Councils.[81] The City Council also assembled an Advisory Committee for Council Election System for the purpose of proposing changes in the manner of electing council members in view of the expansion of the City.[82] Thirteen local civic groups were selected to appoint two members each to the Election System Advisory Committee. Of the 26 people designated to serve on the Committee, only 7 were black and 2 were Hispanic.

---

[79] *See* note 5, *supra*.

[80] In calculating the percentage of the white population which was added, we assumed that the City's Mexican-Americans were all included in the "white" population and, therefore, subtracted them out of the total population as well as the blacks. We recognize that our assumption is not well-founded, *see* note 5 *supra*, but it is preferable to utilize the most conservative estimate. Two alternative methodologies produce somewhat greater percentages. If we simply use the numbers in the "white" category of the 1980 Census, it appears that Pear Ridge and Lakeview contributed 5,696 whites or 17.15% of the eventual total of 33,222. We might also have subtracted all of the City's minority population including American Indians, Asians, Hispanics, blacks and others from the total population; in that event, we conclude that 4,991 whites or 17.03% were added by the consolidation to make a total of 29,301 whites.

[81] A.J.S. ¶ 55.

[82] A.J.S. ¶¶ 54, 61-2.

The record suggests that the Advisory Committee for Council Election System was racially divided.[83] According to the statement in the Committee minutes by Rev. Ransom Howard and the testimony of other black committee members, the white members generally favored an at-large system while the blacks supported a single-member district plan. Eventually, the majority of the Committee recommended to the City Council that the at-large election system be continued and that a seventh councilmanic position be added to the existing six-member council ("7-0-1" plan). A minority report proposing the adoption of a single-member district plan was submitted to the Council by five of the seven black representatives on the Committee.

Plaintiff argues that the City Charter only permitted the Council to increase the number of seats from six to eight without changing the election system itself.[84] Furthermore, the City claims that the addition of a seventh position was a valid effort to "increase minority representation."[85] These explanations, however, ignore the possibility of amending the Charter by means of a referendum election, and they do not justify the failure to read the minority report at the two public hearings held by the City Council on December 28, 1977, to discuss the Committee's recommendation.[86] Without attempting to answer these two questions, the Port Arthur City Council accepted the 7-0-1 plan recommended by the Council Election System Advisory Committee and enacted Ordinance 78-11 on January 16, 1978.[87] Subsequently, Ordinance 78-15 was adopted in

---

[83] A.J.S. ¶ 63; U.S.P.F. ¶ 94 (admitted); Exh. 53; Green Dep. 18-19; Scott Dep. 18-19.

[84] *See* Exh. 133, Part 20 at 15.

[85] Exh. 53.

[86] A.J.S. ¶¶ 65-66.

[87] A.J.S. ¶ 73.

order to make technical adjustments to certain residency district lines.

5. Annexation of Sabine Pass

Approximately six months after consolidation with Pear Ridge and Lakeview, the City of Port Arthur began to annex the area known as Sabine Pass, a separate unincorporated community located eight miles from the closest point in Port Arthur. In view of the problems encountered with the municipalities east of Port Arthur and the movement developing in Sabine Pass to incorporate, the Port Arthur City Council decided to annex the latter community.[88] The City had apparently planned to annex Sabine Pass about five years in the future for various economic and administrative reasons. Among the advantages cited by Port Arthur were obtaining a deep water port, sharing a common water supply, controlling offshore drilling activity, acquiring an area for industrial growth, and preventing fragmentation of jurisdiction.

By virtue of Ordinances 78-43, 78-47, 79-33, 79-34, and 79-67, Port Arthur's population increased by 501 including 31 blacks and 18 Hispanics according to the 1980 Census.[89] The City's total population advanced to 60,994 of whom 24,741 or 40.56% were black and 3,843 or 6.30% were of Spanish origin. Thus, since 1977, Port Arthur has enveloped within its borders 5,675 additional whites and 111 additional blacks who comprise 17.51% and 0.45% of the total number of individuals of their respective races in the enlarged city.[90]

---

[88] Tr. I, 63-64 (testimony of George Dibrell); Sadler Dep. II, 20-21, II, 45-47.

[89] A.J.S. ¶ 67. *See* note 5 *supra*.

[90] As explained in note 80 *supra*, the number of white citizens can be derived in several ways from the 1980 Census statistics. The figures appearing in the text were once again obtained by

6. The 8-0-1 plan

Not having held councilmanic elections since April 2, 1977, the City made another effort to develop an acceptable election system at the beginning of 1980. Exhausting its Charter authority, Port Arthur City Council enlarged itself so as to include nine members ("8-0-1" plan).[91] Eight members were required to reside in different districts, and each had to obtain a majority of the votes cast by all of the qualified voters in the "new" City. Their two-year terms were staggered so that four council members were chosen one year, and the four others were selected the next year. The mayor continued to be elected at large every other year.

The task of dividing the City into eight districts of nearly equal population was assigned to Lyle Vickers.[92] His purpose and that of the City Council was to draw districts "to the maximum extent possible to elect at least two black candidates to the Council, and with a third candidate being elected as the population continues to shift east . . . by 1984 or 1985." Using 1970 Census VAP data and considering the "electability of [particular] people, either current Councilmen or people off the Council," Vickers proposed the following districts:[93]

---

subtracting all Mexican-American and black individuals from the total population. The first alternative method described in note 80 indicates that 6,163 or 18.29% of the total "whites" in the expanded area reside in the newly acquired regions. According to the second alternative, 5,440 whites, constituting 18.23% of the new total of 29,840, have been absorbed by Port Arthur.

[91] A.J.S. ¶ 76.

[92] Vickers Dep. I, 43-44, 53, 83; II, 6.

[93] Exh. 115. The parties have not presented the Court with an analysis of the 8-0-1 plan based on more recent population data.

District	*Total Population*			*Voting Age Population*		
	Total	Black	% Black	Total	Black	% Black
1	8,289	3,694	44.58%	5,382	2,094	38.91%
2	8,216	10	00.12%	5,879	6	00.10%
3	7,474	844	11.29%	5,223	478	09.15%
4	7,983	1,045	13.09%	5,558	592	10.65%
5	9,065	8,735	96.35%	5,186	4,951	95.46%
6	8,317	5	00.06%	5,952	3	00.05%
7	9,761	8,305	85.05%	5,751	4,707	81.84%
8	7,023	563	08.02%	4,942	319	06.45%

This plan was adopted on January 21, 1980, when the City Council enacted Ordinance 80-02.

7. The 4-4-1 plan

In the early months of 1980, Port Arthurians were unable to agree upon a mutually acceptable election plan for the City Council. The Port Arthur firefighters' union presented an alternative election system in April in an effort to resolve the impasse so that a referendum on a collective bargaining agreement could be held.[94] Intending to "provide for the election of minorities in numbers approximately equal to their number in the population,"[95] the firemen proposed a plan in which six members of a nine-member city council would be elected from single-member districts and the other two members would be elected by at-large vote with the mayor ("2-6-1" plan).[96] To implement this plan, it was necessary to amend the City Charter by means of a referendum election called upon petition of 5% of the number of voters at the last general election.[97] The firefighters therefore launched a petition drive to place the 2-6-1 plan on a special ballot.

---

[94] Avery Dep. 6-10.

[95] *Id.* at 13.

[96] A.J.S. ¶ 79.

[97] A.J.S. ¶ 115.

The members of the City Council and certain white citizens, however, were adamant in their insistence upon the election of all council members by at-large vote.[98] Mayor Sadler, for example, accused the firefighters of "trying to take over the City" and voiced strong opposition to the concept of the 2-6-1 plan.[99] On the other hand, certain black citizens including intervenor-defendants continued to advocate the adoption of a pure single-member district election system.[100]

Consequently, when the Community Relations Service of the United States Department of Justice ("CRS") offered to mediate the settlement of these differences, the interested parties quickly accepted.[101] The City chose a team composed only of whites to represent it, and there is some evidence to suggest that members of the City's team perceived their role as representing the white citizens of Port Arthur.[102] A second team was established to represent the black community.[103] Although the firefighters were origi-

---

[98] P.P.F. ¶ 41 (admitted).

[99] Avery Dep. 33-34; Sadler Dep. I, 84, 86.

[100] P.P.F. ¶ 41 (admitted); Tr. II, 120, 122, 124 (testimony of Walter Mosely); Avery Dep. 19.

[101] A.J.S. ¶ 80; Tr. I, 43 (testimony of George Dibrell); Avery Dep. 39-41.

[102] A.J.S. ¶ 80; Dickinson Dep. I (October 6, 1980), 11.

[103] A.J.S. ¶ 80. According to the trial testimony of Walter Mosely, the original black team reorganized as the "Green team" after Mr. Mosely criticized some of its members, and it excluded Messrs. Mosely and Lewis. Thereupon, those two men convened a public meeting of representatives from various community organizations in order to elect members of the "Elected Black Mediation Team." After some discussion of the possibility of trilateral negotiations, Mr. Robert Greenwald, the CRS mediator, determined that the proceedings should be limited to two teams, the City's team and the group of black citizens known as the "Green team." The

nally invited to participate, they were later excluded because the City refused to negotiate with people who worked for the City; Mayor Sadler asserted that this would be in "the best interest of my general public" and that the firemen were needed to fight fires.[104]

Between April 28 and June 18, 1980, the City's team and the black team met several times.[105] Initially, the white team supported the election of all council members by at-large vote, and the black team favored a single-member district system. No agreement was reached, however, on these plans or several other alternatives. At approximately the same time that the firefighters were presenting to the City Council their petition requesting a referendum election on the 2-6-1 plan, the mediation team representing the black community made a final suggestion that the 2-6-1 plan be adopted. Because that plan involved too few at-large seats, the white team rejected it.[106]

The City's team countered with a proposal described as "the bottom line."[107] It provided for a nine-member council including a mayor who continued to be elected at-large. Four council members would be elected from single-mem-

---

Elected Black Mediation Team continued to participate in the mediation effort as a consultant to the Green team. *See* Exh. 139; Tr. II, 115-17 (testimony of Walter Mosely).

[104] Avery Dep. 39-41; Sadler Dep. I, 84.

[105] A.J.S. ¶ 81; P.P.F. ¶ 42 (admitted). Our knowledge of the discussions at these meetings is somewhat deficient because of our decision to quash the discovery subpoena served upon Mr. Greenwald. *See* Order of November 12, 1980. Other participants in the mediation process, however, have testified extensively on the subject.

[106] P.P.F. ¶ 44 (admitted); Tr. II, 120-21 (testimony of Walter Mosely).

[107] A.J.S. ¶ 82; P.P.F. ¶¶ 44-45 (admitted); Dibrell Dep. 51-52.

ber districts. These same districts would also serve as residency districts for the four remaining members who would be elected on an at-large basis ("4-4-1 plan").

In formulating this plan, Lyle Vickers allegedly sought to minimize population deviations among districts and to develop compact districts.[108] The information available at the time indicated that the population of each district was as follows:[109]

District	*Total Population*		
	Total	Black	% Black
1	15,020	12,651	84.23%
2	15,181	1,895	12.48%
3	14,982	1,027	06.85%
4	16,185	9,711	63.95%

More recently, the 1980 Census disclosed that the four proposed districts contain the following number of inhabitants:[110]

---

[108] P.P.F. ¶ 55 (admitted); Vickers Dep. I, 102.

[109] Exh. 15. Vickers used 1970 Census statistics updated by annual "block statistics" furnished by the R. L. Polk Co. and data from the City's Community Development Department. *See* P.P.F. ¶ 56 (admitted). The only VAP information available then or now was that derived from the 1970 Census:

District	*Total Population*			*Voting Age Population*		
	Total	Black	% Black	Total	Black	% Black
1	19,160	12,945	67.55%	11,786	7,337	62.24%
2	15,307	117	00.80%	10,937	66	00.63%
3	15,208	153	01.00%	10,862	87	00.79%
4	16,453	9,987	60.70%	10,287	5,660	54.98%

See Exh. 114.

[110] Defendant's Request to Take Judicial Notice at 3.

District	*Total Population*		
	Total	Black	% Black
1	14,649	11,846	80.86%
2	15,855	3,141	19.81%
3	16,033	919	05.73%
4	14,457	8,835	61.11%

When the black mediation team decided that the 4-4-1 plan did not provide the minority community representation proportionate to its electoral strength, it rejected the City's final proposal and the negotiations broke down.[111] That night, six of the nine members of the City's mediation team formed a committee known as the Citizens' Committee for a Fair Electoral System to plan a petition drive for the purpose of presenting the voters with the 4-4-1 plan as an alternative to the 2-6-1 plan in the special referendum election.[112] Although City Attorney George Wikoff, City Manager George Dibrell and Lyle Vickers were not involved in the Citizens' Committee,[113] the municipal government offered its resources to the proponents of the 4-4-1 plan. The original of the Committee's petition to put the 4-4-1 plan on the ballot was typed in the City Attorney's Office, the instructions for the person circulating the petitions were typed in the Mayor's office, and the script for the radio ad promoting the 4-4-1 plan was written by the Port Arthur Director of Public Information.[114]

Throughout the campaign, the Citizens' Committee emphasized that adoption of the 4-4-1 plan would "keep our city government in the hands of *all* people."[115] This theme

---

[111] A.J.S. ¶ 81; P.P.F. ¶ 45 (admitted); Tr. II, 119 (testimony of Walter Mosely); Green Dep. 21-24; Scott Dep. 28.

[112] A.J.S. ¶ 82; Dickinson Dep. I, 12.

[113] A.J.S. ¶ 82.

[114] Dickinson Dep. I, 6, 38; Sadler Dep. I, 89-90.

[115] Exh. 41, 55-56.

was continually repeated, for example, in a brochure distributed by the Committee which juxtaposed the virtually all-white members of the Committee and City Council who supported the 4-4-1 plan and "a certain group of the Port Arthur firemen" who favored the 2-6-1 plan along with Walter Mosely and Rev. C. O. Hall, two prominent black leaders.[116] In order to justify the abandonment of the pure at-large system, the author of the brochure first claimed that the 4-4-1 plan was an effort "to meet minority political interests (black and Hispanic) with the general interests of the citizenry in a sound and balanced government" and then reminded the reader that he/she would be entitled to vote for six of the nine council seats.

In the referendum election on the two proposed electoral systems held on August 9, 1980, the 4-4-1 plan was approved by a majority of the voters while the 2-6-1 plan was opposed by a majority of the voters in a separate contest.[117] Whites and blacks generally opposed each other at the polls; almost three-quarters of the white voters favored the 4-4-1 plan, and nearly all black Port Arthurians voted against it.[118]

C. History of Blacks in Port Arthur

The City of Port Arthur has a long history of discrimination against its black citizens.[119] Until the mid-1960's,

---

[116] Exh. 41.

[117] A.J.S. ¶ 83.

[118] Exh. 172; McManus Dep. II (November 23, 1980), 71-73. The actual racial polarization score with respect to the election on the 4-4-1 plan was 66. Although not "extreme," that score reflects a significant degree of racial polarization. *See* note 136 *infra*.

[119] Plaintiff has filed a plea of collateral estoppel against the intervenor-defendants so as to foreclose relitigation of certain issues relating to the history of black Port Arthurians which were previously adjudicated in *Mosely v. Sadler*, 469 F. Supp. 563 (E.D.

black citizens were subject to official discrimination under

Tex. 1979). In that action, four black citizens sued the mayor and other officials of Port Arthur claiming that the existing at-large election system violated the fourteenth and fifteenth amendments to the United States Constitution. Judge Steger made extensive findings of fact concerning racial polarization, black participation in the political process, and municipal responsiveness to black needs in the areas of employment and city services. Arguing that it is "in privity" with the defendants and that the current intervenors were party-plaintiffs in that suit, plaintiff City of Port Arthur now contends that those issues should not be relitigated. Furthermore, plaintiff maintains that the issues in question were fully and fairly litigated and decided adversely to the intervenors.

Neither the intervenor-defendants nor the defendant United States has filed a statement in opposition to plaintiff's plea. Nevertheless, the Court is inclined to deny plaintiff's request for the following reasons. First and foremost, we find that the non-participation of the United States in the previous litigation is fatal to the operation of estoppel in this case. The essence of collateral estoppel by judgment is that some question or fact in dispute has been judicially and finally determined by a court of competent jurisdiction *between the same parties or their privies.* 1B Moore's Federal Practice ¶ 0.441[2] (2d ed. 1980) (emphasis added). *See Harris v. Washington,* 404 U.S. 55, 57 (1971); *Association of Bituminous Contractors, Inc. v. Andrus,* 581 F.2d 853, 860 (D.C. Cir. 1978); *Laughlin v. U.S.,* 474 F.2d 444 (D.C. Cir. 1972), *cert. denied,* 412 U.S. 941, *rehearing denied,* 414 U.S. 882 (1973); *Inmates, D.C. Jail v. Jackson,* 416 F. Supp. 119, 120 (D.D.C. 1976). The requirement of identity of parties is justified by the ancient doctrine that a person cannot be bound by a judgment unless he has had reasonable notice of the claim against him and an opportunity to be heard in opposition to that claim; due process requires no less. *See Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation,* 402 U.S. 313, 330 (1971); 1B Moore's Federal Practice ¶ 0.411[1] (2d ed. 1980).

Plaintiff has not alleged and there is no reason to believe that the four individual plaintiffs in *Mosely v. Sadler* were or are in privity with the United States. In fact, only two of the present intervenor-defendants were parties in the previous litigation. *See*

the so-called Jim Crow laws.[120] Segregation persisted in the

---

Tr. II, 114 (testimony of Walter Mosely). Therefore, as the Supreme Court did in *City of Richmond, Virginia v. United States*, 422 U.S. 370, 373 n.6 (1975), we must decline to apply the doctrine of estoppel. That case involved a situation nearly identical to the instant one. The presence of black intervenors who had lost an earlier constitutional challenge to an annexation did not estop relitigation of the question of discriminatory purpose because of the absence of the United States from the first suit. Other courts have refused to bar the United States from bringing actions under the Voting Rights Act when individual plaintiffs have previously failed. *See, e.g., United States v. East Baton Rouge Parish School Board*, 594 F.2d 56 (5th Cir. 1979); *United States v. State of Texas*, 430 F. Supp. 920 (S.D. Tex. 1977).

The second reason that the Court must deny Port Arthur's plea is that the burden of proof in *Mosely v. Sadler* was precisely the reverse of that which exists in the instant case. Two of the current intervenor-defendants challenged the at-large election system on constitutional grounds in the earlier case, and, consequently, they bore the burden of proof. In the case at bar, the burden falls squarely on the plaintiff City to demonstrate that the proposed voting changes do not have a discriminatory purpose or effect. *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

Finally, we observe that the racial situation in Port Arthur and its environs has been the subject of previous litigation not once but twice in recent times. Prior to the decision in *Mosely v. Sadler*, another three-judge district court concluded that "though all of Texas has to some degree suffered the blight of racial discrimination, the attempts of the black community in Jefferson County to eliminate the vestiges of slavery have been met by particular turbulence, animosity, and recalcitrance." *Graves v. Barnes*, 378 F. Supp. 640, 648 (W.D. Tex. 1974), *remanded on other grounds*, 422 U.S. 935 (1975). Although there is authority that the conclusiveness of a prior judgment is not affected by the fact that it may be incorrect, we feel compelled to review the facts once again in view of the inconsistent results reached by the two Texas courts on quite similar issues.

[120] Sadler Dep. I, 129, 241.

City's schools until 1970, and the issue of desegregation is still the source of considerable racial tension.[121]

The black community has also suffered from residential segregation and the accompanying problems. As mentioned above, Port Arthur's blacks were essentially confined to the area west of Houston Avenue until 1957.[122] Although blacks were then pushed across that boundary by urban renewal developments, the black community remains concentrated in the western portion of the City.[123] In addition, it is undisputed that the areas of Port Arthur which are heavily populated by blacks are most in need of municipal improvements.[124] The disparate treatment of black and white citizens is perhaps underscored by the relocation of the municipal library from the downtown area where it was easily accessible to most minority members closer to the predominantly white New Town/In Town development; the new civic center was also built in the same area.[125]

The City has similarly performed poorly with respect to minority employment.[126] Although blacks constituted 33.5% of the municipal workforce in 1973, almost nine-tenths of these black employees were skilled craftsmen and service maintenance workers. Very few blacks held middle and upper level jobs. In fact, at that time, no black employee earned over $10,000 per year while 36 whites received salaries in excess of that amount. The situation has improved only slightly since 1973. In 1980, blacks comprised 39.9% of the workforce, but 81% of those workers still held

---

[121] Evans Dep. 64; Freeman Dep. 7; Sadler Dep. I, 102; II, 7.

[122] *See* text accompanying notes 12 & 13.

[123] *Id.*; Green Dep. 6.

[124] Exh. 71; Dibrell Dep. 11-17.

[125] Hall Dep. 27.

[126] Exh. 73, 136; Dibrell Dep. 24-26.

crafts and maintenance positions. Salaries of $16,000 per year or more were received by 257 non-blacks, but only 24 blacks were as highly paid.

It is also significant that there has been a disproportionately low number of black appointees to Port Arthur's boards and commissions.[127] In 1977, blacks filled only 31.3% of the available posts despite the fact that the City was nearly 45% black. Two years later, only 24.5% of the appointments were held by blacks. Furthermore, as the intervenor-defendants observed, "a significant number of the politically active black citizens that have appeared throughout this case do not appear on the list, while a few have been tapped for double and triple duty."[128]

Black Port Arthurians have fared even less well with respect to elected positions. Although blacks have been voting in municipal elections at least since 1931,[129] have regularly turned out to vote,[130] and have offered numerous candidates for office;[131] few blacks have actually been elected. Under the at-large system which existed prior to 1954, no blacks were ever elected to the seven-member commission even though they constituted 24.24% of the total population and 23.1% of the VAP in 1950.[132] Despite the institution of the single-member district plan and the increasing size of the black community, only five black men

---

[127] Exh. 135.

[128] Defendant Intervenors' Post-Trial Brief at 17 (filed December 29, 1980).

[129] Sadler Dep. I, 218-19; II, 13. *See also* Evans Dep. 14; Freeman Dep. 14; McManus Dep. II, 46.

[130] Evans Dep. 47-48; McManus Dep. II, 45.

[131] Cotrell Dep. 55, 57; Davidson Dep. 10. Blacks have vied for office in 30 races between 1963 and 1977; 19 different black individuals were involved.

[132] A.J.S. ¶¶ 5-6; Guidry Dep. 6.

were elected to the City Council between 1954 and 1963.[133] Furthermore, there was never more than one black, the representative from District 1, on the six-member council at any given time.

Since 1963 when the 6-0-1 plan was implemented, no black candidate has ever won a councilmanic seat in Port Arthur when confronted by a white.[134] The poor performance of black candidates with white opponents is largely attributable to racially polarized voting. Plaintiff does not dispute the fact that most of the elections following the December, 1974, Coleman incident have been characterized by severe racial polarization,[135] but the Court finds that this situation has existed at least since 1969.[136] Our con-

---

[133] Tr. I, 28 (testimony of George Dibrell); Guidry Dep. 5, 8-9; Sadler Dep. I, 130.

[134] Tr. I, 135 (testimony of George Dibrell); Tr. II, 29 (testimony of Charles Cotrell); McManus Dep. II, 89.

[135] Tr. I, 207-08 (testimony of Joseph Zimmerman); McManus Dep. I, 45, 67-68; II, 46-47.

[136] Several experts testified on the issue of racial polarization. Each witness derived an arithmetical polarization score from black versus white councilmanic election results by identifying the 90% black precincts and the 90% white precincts, determining the percentage of votes cast in the black precincts for a particular candidate, and then subtracting the percentage of votes cast for the same individual in the white precincts. Tr. II, 9 (testimony of Charles Cotrell); Davidson Dep. 12-13; McManus Dep. II, 49. In the twelve black versus white contests which Dr. Charles Cotrell identified from 1969 through 1977, the black candidate never defeated his white opponent and only 9.21% of the voters in the black precincts supported the eventual white victor. Tr. II, 11. Dr. Cotrell considered the 82.6 average polarization score which he deduced from the returns to reflect "striking" polarization because other political scientists have declared racial polarization to exist where the scores were in excess of 50 or 60. Tr. II, 10-12. A similar analysis of Port Arthur councilmanic election returns

clusion is not surprising in view of the long history of hostility between black and white Port Arthurians which has

---

between 1963 and 1977 by Mr. F. Chandler Davidson produced an average racial polarization index of 84. Davidson Dep. 15.

Mr. Davidson did not study the contests in which a white candidate faced another white, but Dr. Cotrell did review the eleven elections of this variety which were held between 1969 and 1977 and discovered that blacks and whites alike voted for the same candidate in similar proportions in eight of the races. This voting behavior of the black population contrasted sharply with that exhibited in the black versus white contests and, therefore, supported Dr. Cotrell's conclusion that race was the polarizing factor in the latter case. Tr. II, 12-13, 64-69.

Testifying on behalf of the City, Dr. Susan McManus challenged the opinions expressed by Dr. Cotrell and Mr. Davidson. She argued in convincing fashion that their technique of averaging polarization scores for numerous elections is methodologically incorrect because "it ignores trends, . . . individual races, . . . campaign differentials, . . . voting turnout differentials, . . . [and] specific historical events." McManus Dep. II, 4-5. Nevertheless, the validity of the averaging technique in the instant case is clearly demonstrated by an inspection of the polarization scores for the twelve individual black versus white councilmanic elections held between 1971 and 1977. *See* Exh. 170; McManus Dep. II, 71-73. Nine of the twelve scores exceeded 80, and the only score to fall below 75 was the 63.2 index assigned to the 1977 mayoral race. Dr. McManus also reproached Mr. Davidson for combining whites and Hispanics when he selected those precincts which were over 90% "white". McManus Dep. II, 47. Although this criticism may be technically correct, it is rendered insignificant when one recalls that the 90% figure is merely an arbitrary threshold which approached the ideal 100% level. Finally, Dr. McManus charged that Mr. Davidson's method of excluding races in which black candidates did not run was "unaccepted". McManus Dep. II, 41. Dr. Cotrell, however, reached a conclusion very similar to that of Mr. Davidson by means of a technique in which all councilmanic elections were considered. *See* Tr. II, 7-13.

manifested itself in the form of discrimination, white flight, and, more recently, black political activism.

In an independent study of electoral behavior in Port Arthur between 1969 and 1978, Dr. McManus reported that racially polarized voting was only present in the 1975 election for the mayor and Council and the 1977 election for the Council; only these races had polarization indices in excess of 90, the score which Dr. McManus required. McManus Dep. 1, 45-46; II, 50-51. Although the 1977 consolidation referenda had polarization scores of 56, the 1977 mayoral election had a score of 66, the 4-4-1 referenda had a score of 66, and earlier councilmanic elections had even higher scores; Dr. McManus did not consider those elections to have been polarized. McManus Dep. I, 45; II, 46-47, 50, 61-62, 64-65, 73-74, 119. Her analysis of these results was that "racial polarization in council elections is not attributable to the current electoral system, but to a specific incident involving Port Arthur police in 1975" which generated an anti-incumbent animus among black voters. Exh. 170; McManus Dep. I, 65-67; II, 46, 68.

The testimony of Dr. McManus, however, fails to withstand scrutiny. While she insisted on direct examination that any polarization score below 90 was not indicative of significant racially polarized voting, Dr. McManus admitted on cross-examination that she had used a threshold polarization score of 75 to determine "highly significant" polarization in a study relating to the City of Houston. McManus Dep. II, 53-59. According to her own figures, eleven of twelve black versus white contests between 1969 and 1977 evidenced "highly significant" polarization if the threshold is fixed at 75. The low score in the twelfth race, the 1977 mayoral election, can be attributed to Dr. McManus' method of analyzing multi-candidate contests, *see* McManus Dep. II, 68-70, and perhaps the relatively low polarization scores in the so-called issue elections concerning consolidation and the 4-4-1 plan are best explained by the imperfect identification of issues with skin color in the eyes of the electorate. Finally, we are not unaware that other factors such as incumbency affect the outcome of elections, but we cannot agree with plaintiff's broad statement that "incumbency is a far more decisive factor to election than race." Post-Trial Reply Brief of City of Port Arthur at 2 (filed December 31, 1980). In highly polarized black versus white contests, incumbency is only important to white voters and only insofar as the incumbent is white.

Although a black has not defeated a white in a councilmanic election since 1963, a single black, Arthur Guidry, has continuously served on the City Council from that time to the present.[137] Mr. Guidry first ran at large in 1963 as an incumbent carry-over from the single-member district system, and he has only faced black opponents. In recent years, he has won reelection without a majority of the black votes only because he enjoys the support of the City's white community. Finally, with respect to the contests after 1963 which involved only white candidates, we note that the black citizens of Port Arthur have been unable to wield a so-called "swing vote;" the black population has been unable to influence the outcome of the race by rallying behind one of the two white contestants.[138]

D. History of Mexican-Americans in Port Arthur

Originally, the Hispanic population of Port Arthur was concentrated in an area west of Houston Avenue known as "the colonial", but plaintiff contends that it has since dispersed throughout the City.[139] In support of this assertion, the City directs our attention to the 1970 Census which revealed that fifteen of the twenty-one Census tracts comprising Port Arthur each included over 100 Mexican-Americans and that only one tract contained none.[140] Nevertheless, there is persuasive evidence that the Hispanic community may not be evenly distributed today. According to the 1980 Census statistics, Mexican-Americans ac-

---

[137] U.S.P.F. ¶ 97 (admitted); Exh. 8; Tr. II, 13, 29 (testimony of Charles Cotrell).

[138] Tr. II, 64-65 (testimony of Charles Cotrell). Of the eleven elections in which a white candidate faced another white between 1969 and 1977, only two were decided by the black vote. Tr. II, 12-13, 64-69 (testimony of Charles Cotrell).

[139] Flores Dep. 14; Sadler Dep. I, 220; Silva Dep. 24.

[140] Vickers Dep. I, 50.

counted for 17.60% of the inhabitants of tract 52 whereas tract 58 included only one person of Spanish origin. The greatest number of Mexican-Americans apparently live in the area designated as tracts 54-56 and 63-68 which is east of Houston Avenue and west of Groves. Plaintiff curiously admitted as much by circling tract 65 and labelling it "Hispanic concentration" on a map presented to the Attorney General in conjunction with the City's 1979 application for preclearance under section 5 of the Voting Rights Act.[141]

The testimony relating to other aspects of the lives of Port Arthur's Mexican-Americans is somewhat sparse. However, with respect to electoral politics, it appears that they have been afforded the opportunity to participate fully.[142] Yet, few, if any, Hispanic citizens have actually run for office, and no Mexican-American has ever won a position on the Port Arthur City Council.[143] In addition, there is no evidence that the individuals of Spanish origin have voted or will vote as a block. On the issue of at-large versus single-member district electoral systems, for example, there was testimony that most Mexican-Americans in Texas favor the latter, but neither Mr. Flores nor Mr. Silva, two Hispanic residents of the Port Arthur metropolitan area, supported the ward system.[144]

E. Procedural History

The instant litigation was initiated by a letter from the City of Port Arthur received by the Attorney General on January 21, 1978, which requested preclearance under section 5 of the Voting Rights Act for the voting changes occasioned by the consolidation with Pear Ridge and Lake-

---

[141] Exh. 133, Part 23.

[142] Flores Dep. 19; Sadler Dep. I, 219-20.

[143] Flores Dep. 17-18; McManus Dep. I, 86.

[144] Flores Dep. 20, 22; Silva Dep. 30-31, 36.

view and the adoption of the 7-0-1 plan.[145] Within sixty days, the Attorney General interposed a timely objection denying preclearance because the consolidation significantly diluted black voting strength and the 7-0-1 plan did not sufficiently minimize the discriminatory impact of this dilution.[146] "Should the City of Port Arthur undertake to elect members of its city council from fairly-drawn single-member districts," however, the Department of Justice offered to reconsider its objection.

While the application for preclearance was under consideration, Port Arthur attempted to implement the unapproved voting changes. Consequently, four black Port Arthurians, including the intervenor-defendants Walter Mosely and Willie Lewis, obtained an injunction against the City from a three-judge federal court in Texas. *Mosely v. Sadler,* No. B-78-69-CA (E.D. Tex. March 27, 1979). The complaint also challenged the at-large voting plan on fourteenth and fifteenth amendment grounds, but the court found no such violation.[147] *Mosely v. Sadler,* 469 F. Supp. 563 (E.D. Tex. 1979).

As permitted by the Procedures for the Administration of Section 5, 28 C.F.R. 21.51(b), 51.23 and 51.24, the City requested that the Attorney General reconsider his objections to the consolidation and the 7-0-1 plan. In addition, plaintiff submitted the annexation of Sabine Pass and the 8-0-1 plan for preclearance. On March 5, 1980, within thirty days after receipt of the request, the Attorney General declined to withdraw the earlier objections or approve the 8-0-1 plan because Port Arthur had not adopted a

---

[145] A.J.S. ¶ 74.

[146] A.J.S. ¶ 75; Exh. 109.

[147] The decision of the Texas court with respect to the constitutional issue is not relevant to an action brought under the Voting Righs Act. *See City of Dallas v. United States,* C.A. No. 78-1666 (D.D.C. May 5, 1979).

fairly-drawn single-member district plan as recommended.[148] The annexation of Sabine Pass was also disapproved because it merely "exacerbated the dilution of minority voting strength caused by the earlier consolidation." Noting the lengthy delay which had occurred since the first objection had been interposed, the Attorney General ordered the City to notify his office within seven days as to what steps it was willing to take to obtain a withdrawal of the initial objection and the present objection and to obtain preclearance of the ordinances establishing advisory councils. On March 12, 1980, the City of Port Arthur responded by filing the complaint which resulted in the instant suit.

Subsequently, the citizens of Port Arthur attempted to reach an agreement on a new election system through the CRS mediation program. When the negotiations broke down, the City Council was presented with two petitions requesting a special Charter change election on the 2-6-1 and the 4-4-1 plans. Before the referendum was held, however, the United States Department of Justice filed suit before a three-judge federal district court in the Eastern District of Texas seeking an injunction against it. Although the Texas court permitted the City to proceed with the election, it reserved decision on the "legal effectiveness" thereof. *United States of America v. City of Port Arthur*, No. B-80-216-CA (E.D. Tex. July 24, 1980).

On August 9, 1980, the inhabitants of the enlarged City voted in favor of amending the City Charter by substituting the 4-4-1 plan for the existing electoral scheme. The same three judges who had previously denied the injunction against the election then granted the City authority "to declare the results of the referendum election and to certify the City Charter amendment for the *sole* and *limited* purpose of complete submission to the United States District Court for the District of Columbia before which the

---

[148] A.J.S. ¶ 78; Exh. 110.

City's declaratory judgment action is now pending." *United States of America v. City of Port Arthur*, No. B-80-216-CA (E.D. Tex. Sept. 5, 1980). Accordingly, the complaint before us was amended so that it now includes three counts: Count I seeks a declaratory judgment that the 8-0-1 plan, in the context of the consolidation with Pear Ridge and Lakeview and the annexation of Sabine Pass, is without discriminatory purpose and effect; Count II asks for a declaration to the same effect with respect to the 4-4-1 plan; and Count III requests a declaratory judgment that the establishment of advisory councils from Pear Ridge and Lakeview is not a voting change within the scope of section 5 and, if it is, that it did not have an illicit purpose or effect.

II. CONCLUSIONS OF LAW

In 1965, Congress enacted the Voting Rights Act, 42 U.S.C. §§ 1973-1973p (1974) (amended 1975), "to rid the country of racial discrimination in voting." *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966). This purpose was accomplished in part by the remedy set forth in section 5, 42 U.S.C. § 1973c, the suspension of all new voting regulations pending review by federal authorities to determine whether their use would perpetuate voting discrimination. Under section 5, a "State or political subdivision" determined to be within the coverage of the Act after November 1, 1972, may not "enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972," unless such change has been precleared by the Attorney General or unless the State or subdivision obtains a declaratory judgment from a three-judge panel of the United States District Court for the District of Columbia that such change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color" or membership in a protected language minority

group. 42 U.S.C. § 1973c. *See South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

Exercising the jurisdiction vested in this Court by section 5, we initially determine that plaintiff City of Port Arthur is subject to the strictures of that provision. The Voting Rights Act was declared applicable to the State of Texas in 1975, *Briscoe v. Bell*, 432 U.S. 404 (1977); 40 Fed. Reg. 43746 (Sept. 23, 1975), and it is well established that political units within covered jurisdictions must comply with the preclearance requirement of section 5. *City of Rome v. United States*, 100 S. Ct. 1548, 1554, 1556 (1980); *United States v. Board of Commissioners of Sheffield, Alabama*, 435 U.S. 110 (1978).

Furthermore, it is clear that all of the electoral changes for which plaintiff seeks approval come within the purview of the Act. The Supreme Court has repeatedly held that altering boundary lines by annexations or consolidations which enlarge the city's number of eligible voters constitutes the change of a "standard, practice, or procedure with respect to voting." *See, e.g., City of Rome*, 100 S. Ct. at 1554; *City of Richmond v. United States*, 422 U.S. 358, 367-68 (1975); *Perkins v. Matthews*, 400 U.S. 379, 388-90 (1971); *City of Petersburg, Virginia v. United States*, 354 F. Supp. 1021, 1028 n.16 (D.D.C. 1972), *aff'd*, 410 U.S. 462 (1973). Similarly, any modification of voting plans or procedures is by definition subject to preclearance under section 5. *See, e.g., City of Rome*, 100 S. Ct. at 1554; *Beer v. United States*, 425 U.S. 130, 133 (1976); *Georgia v. United States*, 411 U.S. 526, 530-35 (1973); *Perkins v. Matthews*, 400 U.S. at 390-94; *Allen v. Board of Elections*, 393 U.S. 544, 563-71 (1969). Finally, the Court deems the scope of section 5 broad enough to encompass the creation of elected advisory councils from the areas formerly known as Pear Ridge and Lakeview. *See Allen v. Board of Elections*, 393 U.S. at 563-71; *Horry County v. United States*, 449 F. Supp. 990, 995 (D.D.C. 1978).

The burden of proving that the above-mentioned voting changes are non-discriminatory rests squarely on the plaintiff. *City of Rome*, 100 S. Ct. at 1565 n.18; *Georgia v. United States*, 411 U.S. at 539; *South Carolina v. Katzenbach*, 383 U.S. at 335; *Hale County v. United States*, 496 F. Supp. 1206, 1215 (D.D.C. 1980); *City of Petersburg*, 354 F. Supp. at 1027-28. More specifically, plaintiff must demonstrate by a preponderance of the evidence that the proposed "standard, practice or procedure" does not have the purpose of denying or abridging the right to vote on account of race, color, or linguistic affiliation and that it will not have that effect. *City of Rome*, 100 S. Ct. at 1559-60; *City of Petersburg*, 354 F. Supp. at 1027.

Upon consideration of the entire record before us, we conclude that the City of Port Arthur has failed to shoulder this burden. Although plaintiff has established that the principal motives for enlarging its boundaries and creating advisory councils were non-discriminatory, the City has not shown the lack of a discriminatory purpose behind the adoption of either the 4-4-1 or the 8-0-1 plans. Viewing those electoral systems in the context of expanded borders as we must, we also find that plaintiff has failed to prove that their implementation will not have a discriminatory effect. For the same reason, we decline to approve the institution of advisory councils elected by the people of Pear Ridge and Lakeview. Because the evidence of discriminatory purpose is buttressed by that relating to discriminatory effect, we will address those issues in the reverse order.

A. Effect of the Voting Changes

1. In the context of the expanded City, each of the proposed voting plans has a discriminatory effect.

We deal first with the question of whether or not the expansion of Port Arthur in conjunction with the voting plans at issue has the effect of denying or abridging the

right to vote within the meaning of section 5 of the Voting Rights Act. It has often been acknowledged that additions such as the consolidation of Port Arthur with Pear Ridge and Lakeview and the subsequent annexation of Sabine Pass "present unusual considerations and require special judicial treatment." *City of Rome*, 472 F. Supp. 221, 245 (D.D.C. 1979), *aff'd*, 100 S. Ct. 1548 (1980). Virtually any consolidation or annexation will alter the racial composition of the jurisdiction thereby diluting the voting strength of one racial group or another. Were section 5 to prohibit expansion for that reason alone, a city "would be effectively locked into its original boundaries" and unable to respond to the compelling, non-discriminatory requirements of municipal finance, orderly growth, or the provision of city services. *Id.*; *City of Petersburg*, 354 F. Supp. at 1030. As we have recognized in the past, such a result could not have been intended by Congress when it enacted the Voting Rights Act. *City of Rome*, 472 F. Supp. at 245; *City of Petersburg*, 354 F. Supp. at 1030; *accord*, *City of Richmond*, 422 U.S. at 369. Consequently, this Court has adopted an approach endorsed by the Supreme Court whereby a boundary enlargement which "significantly reduces the proportion of voters of a particular race" will only be refused preclearance under the "effect" test if the minority race is "denied the opportunity to obtain 'representation reasonably equivalent to [its] political strength in the enlarged community.'"[149] *City of Rome*, 472 F.

---

[149] Plaintiff urges this Court to substitute the analysis developed in *Beer v. United States*, 425 U.S. 130 (1976), for the inquiry suggested by *City of Petersburg* and its progeny when judging the "effect" of the expansion and related voting changes before us. In *Beer v. United States*, the Supreme Court held that "a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the" prohibited effect. 425 U.S. at 141. This conclusion followed from Justice Stewart's determination that "the purpose of § 5 has always been to insure that no voting-procedure

Supp. at 245, *aff'd*, 100 S. Ct. 1548, *quoting City of Richmond*, 422 U.S. at 370; *accord, United Jewish Organizations*

---

changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Id.* "Congress desired," he reasoned, "to prevent States from 'undo[ing] or defeat[ing] the rights recently won' by Negroes." *Id.* at 140, *quoting* H.R. Rep. No. 91-397, p. 8.

Originally, plaintiff City of Port Arthur proposed that the "'non-retrogression/enhancement' analysis of *Beer* is in fact and law the same standard as the 'reasonable equivalence' test of *Richmond.*" Plaintiff's Brief at 39 (filed December 15, 1980). Arguing that "there is no warrant in law or reason for the application of dramatically different cirteria [sic] to measure compliance with Section 5 depending on whether the voting change in question is an annexation or something else," plaintiff contends that the voting change at issue must be approved if it is found not likely to lead to retrogression in minority voting strength. *Id.* To buttress this position, plaintiff directs our attention to footnote 11 in *Beer v. United States:*

> This Court has not before dealt with the question of what criteria a legislative reapportionment plan must satisfy under § 5. Last Term in *City of Richmond v. United States*, the Court had to decide under what circumstances § 5 would permit a city to annex additional territory when that annexation would have the effect of changing the city's Negro population from a majority to a minority. The Court held that the annexation should be approved under the "effect" aspect of § 5 if the system for electing councilmen would likely produce results that "fairly reflect[ed] the strength of the Negro community as it exists after the annexation." The *City of Richmond* case thus decided when a change with an adverse impact on previous Negro voting power met the "effect" standard of § 5. The present case, by contrast, involves a change with no such adverse impact upon the former voting power of Negroes.

425 U.S. at 139 n.11 (citations omitted).

We reject plaintiff's argument that the simple analysis used in *Beer v. United States* to test the effect of voting procedure changes

of Williamsburgh, Inc. v. Carey, 430 U.S. 144, 160 (1977); *City of Petersburg*, 354 F. Supp. at 1030.

---

can be transferred to complex situations involving consolidations and annexations. As mentioned above, federal courts have recognized the unusual considerations inherent in the enlargement of municipal boundaries and have developed a special method for judging the effect thereof. Before and after the opinion was handed down in *Beer v. United States*, the Supreme Court has consistently conditioned preclearance of territorial expansions upon proof that the additions "significantly altered the racial balance" and that the post-enlargement "political system ensures the black community representation reasonably commensurate with its voting strength in the expanded city." *City of Rome*, 472 F. Supp. at 246, *aff'd*, 100 S. Ct. 1548; *accord*, *City of Richmond*, 422 U.S. at 368-71.

An examination of the circumstances underlying election procedure changes as opposed to boundary enlargements reveals the wisdom of this special standard. Because the same population with the same racial balance is affected by a procedural change such as reapportionment, it is reasonable to fix the minimum level of representation under the new plan at the level achieved by the same voters under the former plan. When new citizens are added to the municipal population by virtue of a consolidation or an annexation, however, they should not suffer for the failure of the old inhabitants to achieve proportional representation. Implicitly acknowledging the impropriety of such a comparison and the need for flexibility, the Supreme Court has demanded that the minority be afforded representation reasonably equivalent to its political strength in the enlarged community.

We are mindful of Justice Stewart's observation that the "nonretrogression" rule was inconsistent with the result reached in *City of Richmond* because the "chang[e of] the city's Negro population from a majority to a minority" had "an adverse impact on previous Negro voting power," *Beer v. United States*, 425 U.S. at 139 n.11, but we suggest that any boundary enlargement which decreases the proportion of minority voters has a similar "adverse impact" which would warrant the denial of preclearance according to *Beer v. United States*. Rather than banning all such expansions, as it would procedural changes with an "ad-

This analysis was initially applied to the City of Petersburg, Virginia, which was marred by a long history of state-imposed segregation and discrimination which manifested itself in almost total bloc voting by race. *City of Petersburg*, 354 F. Supp. at 1025. Although blacks had won some council seats by majority vote in at-large elections, the City Council had always had a majority of white members who had generally proven unresponsive to the expressed needs and desires of the black community. *Id.* at 1026-27.

---

verse impact," the Supreme Court permits enlarged jurisdictions to cure the discriminatory effect by guaranteeing that the minority race will have the opportunity to obtain representation reasonably commensurate with its voting strength in the expanded community.

Although the City of Port Arthur advanced the above line of reasoning throughout the trial and in its post-trial brief, plaintiff suddenly shifted position in its final submission. Plaintiff then asserted that "this lawsuit presents an expansion plus a legislative reapportionment" and that only the latter should be subjected to the analysis recommended in *Beer v. United States*. Plaintiff's Reply to Defendant's Supplemental Pleading at 6. This eleventh-hour explanation, however, does nothing to advance plaintiff's position and only raises further doubts concerning the legitimacy of the City's initial stance. The cases dealing with annexation clearly establish that the effect of the addition of territory cannot and should not be judged independently of the post-expansion electoral system. *See City of Richmond*, 422 U.S. at 368-72; *City of Rome*, 472 F. Supp. at 245-48; *City of Petersburg*, 354 F. Supp. at 1031. In fact, in *City of Rome*, this Court specifically demanded scrutiny of the "post-annexation political system [to ensure] the black community representation reasonably commensurate with its voting strength in the expanded City." 472 F. Supp. at 246. Although we ultimately determined the effect of Rome's annexations in the context of the electoral rules which carried over from the years preceding the enlargement, we also noted that we would have denied preclearance of the annexations in conjunction with the post-expansion procedural changes had they not been separately declared discriminatory. 472 F. Supp. at 247.

The annexation in question increased the white population by 30% and the number of blacks by only 1%, shifting the latter group from a majority to a minority of the electorate. *Id.* at 1024. We realized that the annexation *per se* was not discriminatory, but we held that:

> the dilution here has occurred as a result of the annexation in the context of at-large elections and bloc-voting by race, and under these circumstances it abridges the right to vote on account of color by impairing the ability of blacks to elect candidates of their choice and to have their ideas on political matters afforded the recognition to which they are entitled on their merits and by virtue of their individual citizenship and their numerical strength in the community.

Id. at 1029. Rather than simply forbidding the annexation, however, we required the City to shift from an at-large to a ward system of electing its councilmen even though "the force of black voting strength will be increased over the results they have been able presently to achieve even with a majority of the voters." *Id.* at 1031. The Supreme Court affirmed without opinion. 410 U.S. 462.

The approach we adopt was next exemplified by *City of Richmond*, 422 U.S. 358. There, after Richmond annexed some adjacent territory which augmented the number of whites by 32% and blacks by just over 1% thus transforming the former black majority into a 42% minority, the City implemented a single-member district plan which promised to produce four black councilmen on a nine-member Council. *Id.* at 363, 366. Despite the diminution in relative black voting strength, the Supreme Court upheld the annexation and the ward system because the electoral system "would afford [blacks] representation reasonably equivalent to their political strength in the enlarged community. . . . Negro power in the new city is not undervalued, and Negroes will not be underrepresented on the Council." *Id.* at 370-371.

Most recently, we addressed the problem of annexations which decrease the minority proportion of the population in *City of Rome*, 472 F. Supp. 221. The circumstances of the black minority were not as grievous as those in *City of Petersburg*. Black voters had not been impeded by direct barriers to voting for many years, and the white elected officials had been quite responsive to the needs of the black community. *Id.* at 224-25. Very few blacks had run for office, however, and no black candidate had ever won an election; although there was no statistical demonstration of racially polarized voting, we concluded that "a substantial measure of racial bloc voting" existed. *Id.* at 225-27. In this context, Rome proceeded to annex areas in which "presently close to 10% of the white voters, and virtually none of the black voters, reside." *Id.* at 247. As the Supreme Court later explained with approval, the district court determined that the City failed to prove "that its electoral system 'fairly reflects the strength of the Negro community as it exists after the annexation[s]' . . . based on the presence of three vote-dilutive factors: the at-large electoral system, the residency requirement for officeholders, and the high degree of racial bloc voting." *City of Rome*, 100 S.Ct. at 1567. Nevertheless, we declined to condition approval of the annexations upon adoption of a single-member district plan as in *City of Petersburg*. Among the reasons for this decision were the less serious circumstances in *City of Rome*, the recognized advantages of a ward system, the unwillingness to intrude in the City's affairs, and the flexible position taken by the Attorney General on the issue. 472 F. Supp. at 247-49.

In analyzing the effect of the expansion of Port Arthur's borders, we first conclude that it significantly altered the racial balance in the City. Rather than viewing the consolidation and the subsequent annexation separately, we will treat them as a single and unified voting change because of their "indivisible cumulative impact on black voting strength and in order to prevent frustration of the Act

through piecemeal changes." *City of Rome*, 472 F. Supp. 247. Furthermore, we rely upon "the most current available population data," the 1980 Census, to make this determination.[150] *City of Rome*, 100 S. Ct. at 1567. We do not, as plaintiff argues, compare pre-expansion population figures based on 1970 Census data with post-expansion figures derived from the 1980 Census,[151] but rather we attempt to respond to the current situation by looking only at the populations which now reside in the City and the added areas.

The 1980 Census reveals that the communities with which Port Arthur joined contain 5,675 whites and 111 blacks while the inhabitants of the enlarged City include 32,410 whites and 24,741 blacks.[152] Thus, over 17% of the whites and virtually none of the blacks live in the new areas.[153] Al-

---

[150] *See* note 5 *supra*. When *City of Rome* was before this Court, we offered the following explanation for using the most recent information:

> This approach comports with the terms of section 5, . . . which requires, in the future tense, that the plaintiff jurisdiction demonstrate that its voting changes "will not" have a discriminatory effect; it comports also with the fact that cities frequently annex relatively unpopulated areas for purposes of future growth and development. Prior judicial opinions further teach that a court in Voting Rights Act cases should respond to the realities of a situation as they exist at the time of decision.

472 F. Supp. at 246-47.

[151] *See* Plaintiff's Brief at 12 (filed December 15, 1980).

[152] *See* text accompanying notes 89 & 90 *supra*.

[153] Although the Supreme Court has expressed a preference for VAP data in section 5 cases, *City of Rome*, 100 S. Ct. at 1567 & n.22; *United Jewish Organizations*, 430 U.S. at 164 & n.23, the only such information which the parties have submitted to this Court relate to the 1970 Census. *See* note 5 *supra*. According to

though the effect of the territorial enlargement here is not as pronounced as it was in *City of Petersburg* or *City of Richmond* where the additional white population was over 30% of the total and the black community was reduced from an electoral majority to a minority, the effect in the instant case is significant nonetheless. In *City of Rome*, we held that the racial balance was substantially altered when only "10% of the white voters, and virtually none of the black voters, reside in the annexed area." 472 F. Supp. at 247. Because the impact of the consolidation with Pear Ridge and Lakeview and the annexation of Sabine Pass is nearly twice as great as that in *City of Rome*, we must inquire further whether blacks have a fair opportunity to obtain representation reasonably proportionate to their post-expansion numerical strength.

The conclusion reached by this Court is that none of the electoral systems proposed by plaintiff Port Arthur affords the black citizens of the City the requisite opportunity to achieve representation commensurate with their voting strength in the enlarged community. Blacks comprise 40.56% of the total post-expansion population, and we estimate that they constitute 35% of the voting-age population.[154] Neither the 4-4-1 plan, the 8-0-1 scheme, nor the

---

that data, Pear Ridge, Lakeview and Sabine Pass contained 5,512 non-blacks and 63 blacks of voting age. Given that the non-black VAP of the enlarged City was 30,115 and the black VAP was 13,096, we observe that the expansion of Port Arthur added over 18% of the voting-age non-blacks and only 0.48% of the voting-age blacks. This result reinforces the conclusion drawn in the text on the basis of the 1980 Census data.

[154] An estimate of the percentage of the VAP which is black can be derived by extrapolation from the 1970 Census data. In 1970, blacks accounted for 40.01% of the total population of old Port Arthur and 34.62% of the VAP. Ten years later, blacks are also approximately 40% of the population (of the enlarged City), so they presumably form close to 35% of the VAP. The Court is

pre-existing 6-0-1 system offers the black community a reasonable possibility of obtaining representation which would reflect political power of that magnitude.

The voting system most recently adopted and the one upon which plaintiff principally relies is the 4-4-1 plan: four members residing in different districts elected at large, four members elected from single-member districts, and the mayor elected at large. Due to a combination of vote-dilutive factors, this plan insufficiently neutralizes the adverse impact on the black community occasioned by the enlargement of the City. First, the black and white communities in Port Arthur have become seriously polarized with respect to voting because of the direct and indirect discrimination suffered by black Port Arthurians for many years and the failure of City officials to be responsive to black interests and needs. Although the history of race relations in Port Arthur may not be quite as tainted as that described in *City of Petersburg*, the instant circumstances do resemble those in Petersburg in that whites have dominated the political process, have been elected by "almost total bloc voting by race," and have then been inattentive to the problems of providing blacks with city services and jobs. Furthermore, the racial situation in Port Arthur is somewhat worse than that described in *City of Rome* where the municipal government was more responsive to the black community and the evidence of racial polarization was less convincing.

In addition, the 4-4-1 plan contributes to the diminution of minority voting strength. As determined in *City of Petersburg* and *City of Rome*, the black population effectively has no opportunity to elect the at-large council mem-

---

cognizant of the dangers involved in such analyses, but it notes that plaintiff and defendant United States have both suggested that we adopt this method. *See* Plaintiff's Brief at 42; Request of Defendant United States of America to Take Judicial Notice at 5.

bers. Where blacks constitute only 40% of the total population and 35% of the VAP, they cannot defeat candidates proffered by their white opponents in a racially polarized atmosphere.[155] Moreover, this situation is exacerbated by the majority vote and residency requirements included in the 4-4-1 system because these features tend to promote head-to-head contests between black and white candidates and undermine the possibility of electing a council member of the minority's choice by single-shot voting.[156] In fact,

---

[155] *See* Tr. II, 25 (testimony of Charles Cotrell); Cotrell Dep. 44-45; Davidson Dep. 9, 114. The Supreme Court has also recognized the inescapable logic of this conclusion:

> Where it occurs, voting for or against a candidate because of his race is an unfortunate practice. But it is not rare; and in any district where it regularly happens, it is unlikely that any candidate will be elected who is a member of the race that is in the minority in that district.

United Jewish Organizations, 430 U.S. 166-67 (1977).

[156] The United States Commission on Civil Rights has reported that:

> There are a number of voting rules which have the effect of frustrating single-shot voting . . . . [I]nstead of having one race for four positions, there could be four races, each for only one position. Thus for post no. 1 there might be one black candidate and one white, with the white wining. The situation would be the same for each post, or seat—a black candidate would always face a white in a head-to-head contest and would not be able to win. There would be no opportunity for single-shot voting. A black still might win if there were more than one white candidate for a post, but this possibility would be eliminated if there were also a majority requirement.
>
> [Second,] each council member might be required to live in a separate district but with voting still at large. This—just like numbered posts—separates one contest into a number of individual contests.
>
> [Third,] the terms of council members might be staggered. If each member has a 4-year term and one member is elected

under these conditions, a black candidate has never beaten a white at large in Port Arthur's history, and the only black man to have won a councilmanic position by at-large vote has not been the choice of the black community in recent years. Although theoretically possible, black Port Arthurians have not even wielded a swing vote in at-large races between two or more white contestants. Thus, the black voters of the City essentially have no role in determining the outcome of the five at-large elections for council seats.[157]

With respect to the four remaining single-member posts, there is no dispute that two will be totally outside the sphere of influence exerted by the black minority if the patterm of racially polarized voting persists.[158] Comprising only 19.81% of the total population in District 2 and 5.73% of that in District 3, blacks have no power to affect the outcome of the single-member races in those wards. Similarly, the Court agrees with the unanimous expert testimony that the representative elected by District 1 will be selected by the black community which accounts for 80.86%

---

each year, then the opportunity for single-shot voting will never arise.

U.S. Comm'n on Civil Rights, The Voting Rights Act: Ten Years After, 207-08 (1975). *See also* Tr. II, 16, 18-19 (testimony of Charles Cotrell).

[157] We include the mayor among the council members elected by at-large vote; thus the City Council consists of nine positions under the 4-4-1 and 8-0-1 plans or seven positions under the 6-0-1 plan. Although the additional ceremonial and "political" responsibilities assigned to the mayor do distinguish him from the other council members, we find controlling the fact that the mayor casts an equal vote on all issues before the Council. *See* text accompanying note 20 *supra*. When determining the minority's opportunity to obtain "representation," the mayor must be considered.

[158] Tr. II, 23-25 (testimony of Charles Cotrell); Bowers Dep. 27; Davidson Dep. 8-9; Hofeller Dep. 35-36; McManus Dep. II, 90.

of the population therein.[159] Finally, although there is some evidence that the blacks who make up 61.11% of the population of District 4 will have difficulty controlling the result of the election in that district, we find that there is indeed a reasonable probability that the choice of the black voters will prevail.[160]

---

[159] Tr. II, 23-25 (testimony of Charles Cotrell) (based on 1970 Census data and 1979 estimate); Bowers Dep. 27 (based on 1970 Census data); Davidson Dep. 8-9 (based on 1979 estimate); Hofeller Dep. 35-36 (based on 1980 estimate); McManus Dep. II, 90 (based on 1979 estimate).

[160] Defendant United States contends that the 61.11% majority held by the blacks in District 4 is insufficient to insure them the opportunity to elect a representative there. *See* Post-Trial Brief of Defendant United States of America at 44-45 (filed December 23, 1981); Defendant United States of America's Request to Take Judicial Notice at 3-5. In support of this assertion, defendant cites the testimony of Dr. Charles Cotrell to the effect that District 4 was "getting close . . . to a problematic district" when it was estimated to be 63.5% black. Tr. II, 23. Defendant also refers us to *State of Mississippi v. United States*, 490 F. Supp. 569, 575 (D.D.C. 1979), *aff'd*, 444 U.S. 1050 (1980), for the proposition that "it has been generally conceded that, barring exceptional circumstances such as two white candidates splitting the vote, a district should contain a black population of at least 65 percent or a black VAP of at least 60 percent to provide black voters with an opportunity to elect a candidate of their choice." *See also Donnell v. United States*, C.A. No. 78-0392 (D.D.C. July 31, 1979), *aff'd*, 444 U.S. 1059 (1980).

Although blacks comprise only 61.11% of the total population of District 4 and approximately 55% of the VAP, *see* notes 109 & 154 *supra*, we nevertheless adjudge that number sufficient to provide them with the chance to elect a candidate of their choice. Unlike *State of Mississippi*, we have found that black voter turnout and general political activity nearly approximate that of the white community. *See* text accompanying notes 129-31. Therefore, it is not necessary that blacks attain a 65% overall majority or a 60% majority of the VAP in order to obtain representation in District 4.

We reach these conclusions concerning the probable impact of the 4-4-1 plan despite arguments to the contrary offered by plaintiff. According to the City, there is a distinct possibility that one or more at-large seats will be subject to the control of the black community. With respect to District 1, for example, Port Arthur observes that a black man, Arthur Guidry, has been continually re-elected at-large since 1963, that a white candidate has never surfaced to challenge him, and that a black will continue to be elected due to a "sense of fairness."[161] The Court, however, is not persuaded. As racial polarization has increased in recent years, Mr. Guidry has not been the choice of the black minority; he has only won re-election because he has the support of the white population. Secondly, although District 1 has never produced a white candidate in the past, the inclusion within that ward of Sabine Pass, a separate, predominantly white community with independent interests, can be expected to result in white candidacies which will prevail in the City's racially polarized atmosphere. Lastly, the subjective judgment of Dr. Susan McManus that the voters of Port Arthur will elect a third black council member out of a "sense of fairness" is not credible where there is racial bloc voting and there are already two black members from single-member Districts 1 and 4.

For similar reasons, plaintiff's contention that a black candidate from District 4 will prevail in an at-large race fares no better. At approximately 36% of the ward's population, the number of whites in this district significantly ex-

---

Moreover, we note that individuals of Hispanic origin comprise 2.7% of the district's population thereby relegating white citizens to a maximum of 36%. Unless we assume that whites, Hispanics, and other minorities vote as a monolithic group, the black inhabitants of District 4 will certainly derive the benefits of their clear majority.

[161] *See* McManus Dep. II, 95-96; Post-Trial Reply Brief of City of Port Arthur at 2-3.

ceeds the number in District 1, and it insures the emergence of a candidate who represents their interests. Without the so-called sympathy vote, this white candidate is then fairly certain to succeed at large when the white majority normally votes for the white candidate.

The third at-large position which plaintiff urges could be won by the minority's candidate is that of the mayor. In support of this proposition, the City cites testimony by A. Z. McElroy, a former black mayoral candidate, and George Dibrell, the City Manager.[162] However, we must discount the statements of both witnesses; Mr. McElroy based his conclusion on the premise that blacks were an electoral majority, and Mr. Dibrell's conclusory opinion was that of an "interested witness" who was a proponent of the 4-4-1 plan and continued to serve as a City official after its enactment. *See City of Richmond*, 422 U.S. at 377; *Hale County v. United States*, 496 F. Supp. at 1217. Once again, we conclude that a white victory is inevitable in view of the high degree of racial bloc voting and the existence of a white majority in the City.

A final defense raised by plaintiff in its effort to prove that the 4-4-1 plan is without a discriminatory effect concerns the Hispanic minority. Assuming that the 6.30% of Port Arthur's population which is of Spanish origin is evenly distributed throughout the enlarged City, Dr. McManus testified that a pure single-member district system would render the Mexican-Americans "almost helpless in terms of, (a) electing their own person to [the] Council, and (b) being able to leverage any of the other . . . Council members."[163] On the other hand, if at-large seats are available, Hispanic citizens will supposedly have more opportunity to achieve political representation and might even

---

[162] Tr. I, 79 (testimony of George Dibrell); McElroy Dep. 14-15, 31-34.

[163] McManus Dep. I, 25, 31-33.

gain a council position due to the omnipresent "sense of fairness." In the opinion of Dr. McManus, the 4-4-1 scheme is the best accommodation of the separate black and Hispanic political interests.

Although we recognize that Mexican-Americans are protected under the Voting Rights Act just as other minorities are, we fail to see the merit in plaintiff's position. There is substantial evidence that the residents of Spanish origin are not equally dispersed throughout Port Arthur, and, therefore, it is conceivable that the Mexican-Americans in a single ward might exercise significantly more voting power in a single-member district contest than the city-wide Hispanic population could wield at large. Even if plaintiff's assumption that this group is evenly distributed were correct, the Court rejects the suggestion that the Spanish-speaking minority would be more influential in an at-large race than in a single-member district election; a constant proportion of the population made up of Mexican-Americans should have the same voting power regardless of the size of the electoral unit. Moreover, plaintiff has not sufficiently demonstrated that this voting power is of any consequence. With only 6.30% of the total population and no apparent political cohesion, Port Arthur's Hispanic community is unlikely to have an important impact on any election. To the extent that Port Arthurans of Spanish origin will affect the political process, they may do so with equal ease in a ward system or in an at-large setting.

In sum, the 4-4-1 plan presents the black minority in the City of Port Arthur with the opportunity to elect two candidates of its choice to the nine-member City Council. Where blacks constitute 40.56% of the total population and approximately 35% of the VAP, an election plan which affords them the potential to select only 22.22% of the council members seriously undervalues their voting strength. Though we are aware that "members of a minority group have [no] federal right to be represented in

legislative bodies in proportion to their number in the general population," *Beer v. United States*, 425 U.S. at 136 n.8, *citing Whitcomb v. Chavis*, 403 U.S. 124, 149 (1971), we hold that the 4-4-1 scheme in the context of highly polarized racial bloc voting does not adequately neutralize the adverse impact of the expansion of Port Arthur by providing the black community with the opportunity to obtain representation reasonably equivalent to its voting strength in the enlarged City.

In view of our findings with respect to the 4-4-1 plan, we need only pause for a moment to consider the effect of the 8-0-1 plan. Given the existence of racial bloc voting, the Court concludes, as we did in *City of Rome*, that this at-large electoral system with a residency requirement is inadequate. Judging by the 1970 Census figures, white candidates will in all likelihood emerge from every district except perhaps District 5 where blacks constituted 96.35% of the total population and 95.46% of the VAP. Because of the history of black failures to defeat whites at large and the increasing racial polarization, black Port Arthurians will elect no more than one of nine representatives under the 8-0-1 plan. With one person of the black minority's choice already on the Council, a second is not likely to be forthcoming out of a "sense of fairness." Finally, for the reasons elaborated upon earlier, a pure at-large plan is no more advantageous for the Mexican-American population in the City than a plan encompassing single-member districts.

Having rejected the 4-4-1 and 8-0-1 plans for insufficiently neutralizing the adverse impact on the black minority caused by the enlargement of Port Arthur, we must now consider the effect of the 6-0-1 scheme which presumably carries over to the present from the period preceding the expansion. *See City of Rome*, 472 F. Supp. at 247. The record is devoid of evidence relating to this election plan subsequent to the consolidation and annexation. Neverthe-

less, we find that it cannot withstand our scrutiny because it suffers from each of the three vote-dilutive factors for which we condemn the 8-0-1 system. Thus, plaintiff City of Port Arthur has failed to carry its burden of demonstrating that it has implemented a voting plan which insures the black population an opportunity to obtain representation reasonably commensurate with its voting strength in the enlarged community.

2. The establishment of advisory councils has a discriminatory effect.

When the City Council of Port Arthur officialized the consolidation with Pear Ridge and Lakeview, two supplementary ordinances were enacted which established independent advisory councils for those two areas. Elected by the predominantly white residents of the two communities, the members of these councils were to have direct access to and influence on the decision-making process of the municipal government for a five-year transition period. Because the minority populations in the City do not have the opportunity to elect advisory representatives such as these, we are compelled to declare the Pear Ridge and Lakeview Advisory Councils discriminatory in effect. Plaintiff has failed to present any evidence which would warrant the opposite conclusion.

B. Purpose of the Voting Changes

Under section 5, we need not reach the issue of whether the changes in voting standards, practices or procedures were undertaken with the purpose of denying or abridging the right to vote on account of race, color or language-affiliation if we find that these same actions have a discriminatory effect. Nevertheless, the substantial evidence that plaintiff was motivated to adopt the 8-0-1 and the 4-4-1 plans by an impermissible intent provides an alternative basis for denying preclearance. In fact, even if the

effect of these electoral modifications was entirely legal, the implication of a discriminatory purpose would be sufficient reason for us to prohibit their implementation. *See City of Richmond*, 422 U.S. at 378.

We begin with the rule of law that "an official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute." *Id.* In order to identify this illegal purpose, the court may—indeed must—conduct:

> a sensitive inquiry into such circumstantial and direct evidence of intent as may be available. The impact of the official action—whether it "bears more heavily on one race than another," *Washington v. Davis* [426 U.S.] at 242[, 96 S. Ct. at 2049]—may provide an important starting point. Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face . . . .
>
> The historical background of the decision is one evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes. . . . The specific sequence of events leading up to the challenged decision also may shed some light on the decision-maker's purposes.

Village of Arlington Heights v. Metropolitan Development Corp., 429 U.S. 252, 266-67 (1977) (citations omitted). *See also Mobile v. Bolden*, 100 S. Ct. 1490 (1980); *Hale County*, 496 F. Supp. at 1218; *City of Rome*, 472 F. Supp. at 243.

Generally, in section 5 suits, plaintiff bears the burden of proving by a preponderance of the evidence that an invidious purpose did not exist. *See Hale County*, 496 F. Supp. at 1218. When dealing with the accretion of land by a state or political subdivision, the Supreme Court has

permitted plaintiffs to escape the consequences of a contemporaneous discriminatory intent if it can be demonstrated that "there are now objectively verifiable, legitimate reasons for the annexation." *City of Richmond*, 422 U.S. at 375.

1. The consolidation of Port Arthur with Pear Ridge and Lakeview and the annexation of Sabine Pass are not infected by a discriminatory purpose.

Initially, the Court must examine the historical background of the consolidation of Port Arthur with Pear Ridge and Lakeview and the subsequent annexation of Sabine Pass. Plaintiff City of Port Arthur would have us believe that this history was unstained by official discriminatory acts and that there were legitimate motives for its attitude toward and participation in the expansion of its borders. The scenario begins with evidence of the City's long-standing interest in growth. Although the numerous efforts to annex or consolidate with some of the surrounding communities in the 1940's and 1950's were not always successful, the City Council and the residents of Port Arthur routinely supported them. Then, in 1963, Port Arthurians turned their attention inward. Blacks and whites alike voted to substitute a new at-large voting scheme, the 6-0-1 plan, for the existing ward system in an attempt to rid the City of corruption which was believed to be associated with the latter plan.

With the arrival of the 1970's came a series of regional problems relating to municipal finance, services, and growth which once again led Port Arthur to ponder the possibility of joining with its neighbors. Because all of the surrounding black areas had already been absorbed, the City was compelled to focus on predominantly white communities. The PAS consulting group strongly recommended this action in 1973 and further counseled that the City would have to engage in an extensive promotional campaign to ensure success. After some additional [illegible]odding by resi-

dents of the neighboring towns, the City Council heeded the advice of PAS and consolidation with Pear Ridge and Lakeview was accomplished in 1977. Shortly thereafter, Port Arthur annexed Sabine Pass for many of the same administrative and economic reasons and in order to forestall the fragmentation of jurisdiction which had plagued it for so long on its eastern border. To accommodate the addition of approximately 7,000 new citizens, the City attempted to enlarge the Council by implementing the 7-0-1 plan.

In reviewing the events preceding the expansion of Port Arthur's boundaries, however, the Court cannot overlook certain events which suggest that municipal officials were at least partially motivated by a desire to abridge the electoral rights of the black population. Although the black citizens of the City had long been the objects of discrimination and segregation, the first official action of significance to this inquiry was the redrawing of district lines in 1963 on an east-west axis. As a result, the majority of black citizens remained concentrated in the first district, and the increasing black population east of Houston Avenue was diluted by combining it with the white areas further east. The second suspect action of the City Council was the publication of a series of advertisements in the Port Arthur News warning of the effort "to rally the local black community to gain control of the city government" in the April, 1977, councilmanic elections. Despite plaintiff's attempt to color these ads as admonitions of an "outside takeover," they were obviously intended to alert the white population to the serious political challenge posed by black Port Arthurians.

The circumstances surrounding the initiation of the consolidation drive by municipal officials offer a third bit of incriminating evidence. Although the PAS report recommending consolidation had been in the City Council's possession since 1973 and a few individuals from the neighbor-

ing towns had made inquiries on the subject since 1975, no action was taken by the City until immediately after the white candidates narrowly won the highly polarized elections in April, 1977. In the course of the ensuing consolidation campaign, Mayor Sadler and City Manager Dibrell arranged for the controversial meetings with white representatives of Pear Ridge, Lakeview and Griffing Park. Among the advantages cited in favor of consolidation at those meetings was the so-called "stabilization of the population" which was little more than a euphemism for controlling the increasing proportion of the population comprised by blacks.

Finally, between the effective date of the consolidation and the completion of the Sabine Pass annexation, the City Council revealed its invidious intent through its participation in the modification process which resulted in the 7-0-1 plan. Though the black community accounted for almost 40% of the population, only 27% of the individuals appointed to the Advisory Committee for Council Election System were black. When the racially-divided Committee later submitted two reports to the Council, the legislative body ignored the black minority's report recommending the adoption of a single-member district plan and refused to read it at two public hearings.

Despite these indicia of an original discriminatory purpose, we find that plaintiff has successfully demonstrated the existence of legitimate reasons for the expansion as of the present time. Many of the mutual benefits of consolidation cited in Port Arthur in 1977 serve to justify the merger today. In the financial sphere, Pear Ridge and Lakeview now enjoy a reduction in their tax rate, the absorption by Port Arthur of their contractual debts for water and sewer service, and the City's assumption of their responsibility to make capital improvements to the same services. The City, on the other hand, ensured the automatic receipt of federal revenue-sharing funds for the foreseeable future

by boosting the population level substantially beyond the threshold of 50,000.

Additionally, Port Arthur, Pear Ridge and Lakeview achieved certain economies of scale with respect to several municipal services. Not only did the three communities continue to share water and sewer services, but they have also joined police and fire protection forces. The quality of these combined, expanded services has been improved at little extra cost. Another service, that provided by the Port Arthur public library, remains available to all residents of the enlarged City free of charge. Lastly, we find a legitimate justification for consolidation in the expectation that the City would increase its visibility thereby attracting new businesses and creating new jobs.

Some of the same non-discriminatory incentives warrant Port Arthur's annexation of Sabine Pass. Obviously, the addition of Sabine Pass further guaranteed eligibility for mandatory federal funding and further increased the visibility of the City. Furthermore, Port Arthur prevented the fragmentation of jurisdiction which had plagued it to the east, obtained a deep water port, acquired an area for industrial growth, and gained control of offshore drilling activities.

Because we conclude that plaintiff has convincingly demonstrated the existence of legitimate purposes behind the joinder with Pear Ridge, Lakeview and Sabine Pass, we hold that plaintiff has satisfied the "purpose" test of section 5 with respect to voting changes occasioned by the enlargement of its borders.

2. The establishment of advisory councils from Pear Ridge and Lakeview was accomplished without a discriminatory purpose.

At the same time that the consolidation became effective, the City created Pear Ridge and Lakeview Advisory Councils, but, as mentioned above, little evidence relating to

these councils has been adduced. In their defense, Mayor Sadler offered that they were created to smooth the transition for the two towns from being independent to being an integral part of a larger entity.[184] He added that the councils were only established for a five-year period expiring at the end of 1982. The intervenor-defendants have suggested, however, that the City offered to establish these councils in order to entice the surrounding townships to join their primarily white populations with Port Arthur.[185] Furthermore, they urge that the discriminatory effect which we have found is further evidence of the City's invidious purpose.

After weighing this limited evidence, the Court concludes that the preponderance thereof exhibits the absence of a discriminatory intent. The effort to portray the creation of these councils as mere bribery is nothing more than a conclusory allegation. Despite their unfortunate disparate impact, advisory councils such as these appear to be sensible devices for facilitating major changes such as the fusion of three formerly independent cities. That the councils will only exist for five years convinces us that the purpose of instituting them was only to ease the transition.

3. The 8-0-1 and 4-4-1 plans were adopted for an illicit discriminatory purpose.

Although we find that plaintiff has met its burden of proving that the territorial expansion and the establishment of advisory councils were accomplished without the purpose of denying or abridging the black minority's right to vote, we reach the opposite conclusion with respect to the adoption of the 8-0-1 and the 4-4-1 plans. Particularly when we view the events subsequent to the annexation of Sabine Pass in conjunction with those which preceded it,

---

[184] Sadler Dep. I, 72.

[185] Defendant-Intervenors' Post-Trial Brief at 4.

the vast preponderance of the evidence indicates that the last two voting changes submitted to us for preclearance were enacted with an invidious purpose.

As we have stated, the specter of discrimination was raised by the 1963 redrawing of district lines, and its continued existence was marked by the April, 1977, campaign advertisements. The severely polarized councilmanic election results then sparked a mysteriously sudden push for expansion which significantly diminished black voting strength. Rather than neutralizing the effect of this dilution, City officials devised the 8-0-1 and 4-4-1 plans which guaranteed that blacks would remain underrepresented on the City Council by comparison to their numerical strength in the enlarged community. Because of this invidious motive, we condemn the voting plans.

Even before the annexation of Sabine Pass was completed, the 7-0-1 plan, the first modification of the original 6-0-1 plan, was rejected by the Attorney General who recommended the implementation of a single-member district scheme. Nevertheless, the City Council stubbornly clung to the concept of at-large elections where single-shot voting was impeded by residency and majority vote requirements. Knowing that City politics were seriously polarized by race, the officials responsible for developing the 8-0-1 plan must have realized the improbability of the black population electing more than one candidate of its choice. Even if the 8-0-1 plan produced two black council members as plaintiff allegedly intended, the black minority was invidiously denied equitable representation given that it was thought at the time to comprise 35.11% of the total population and 30.31% of the VAP.

When the Attorney General interposed an objection to the 8-0-1 plan, members of the Port Arthur firefighters' union designed the 2-6-1 plan in an effort to obtain section 5 approval. Despite the double censure of the Attorney General, the City Council opposed the firemen's plan and re-

mained adamant about the election of all council members by at-large vote. The white team representing the City even refused to negotiate with the firefighters perhaps because it wished to dissociate the white firemen from the 2-6-1 plan in order to establish its own scheme as the official white plan. Later, when the black team presented the 2-6-1 plan as a compromise at the mediation table, it was officially rejected because it included too few at-large seats. The white team countered with the 4-4-1 plan, which guaranteed white Port Arthurians overwhelming control of seven of nine councilmanic positions even though 41.20% of all those in the City were estimated to be black. This was the City's "bottom line."

Immediately after the mediation negotiations collapsed, the white team organized a Citizens' Committee to place the 4-4-1 scheme on the referendum ballot as an alternative to the 2-6-1 proposal. The Mayor, the City Manager, and the City demographer did not participate in the Committee's work, but municipal resources were donated nonetheless. Though the 4-4-1 campaign propagandizers refrained from making patently racist remarks, the Committee members continually reminded the voters to "keep our city government in the hands of *all* people" and emphasized the fact that a majority of council members—six of nine—would be voted on by each person. The racially polarized results of the referendum erase any doubts as to the racist motivation driving the proponents of the 4-4-1 plan and those who voted for it.

Plaintiff has attempted to justify its support for these electoral plans by citing legitimate purposes. The 8-0-1 plan, for example, was touted as a means of enhancing representation of the black minority because the enlarged Council had more seats available and because the residency requirement limited the candidate pool. We explained earlier, however, that this expectation had little or no prospect of materializing in an atmosphere characterized by severe

racially polarized voting. Also pretextual was the suggestion that the 8-0-1 scheme would advance the political position of the City's Mexican-American population. We have already shown that the two assumptions underlying this prediction, the even distribution of Hispanics throughout the community and the existence of a sympathy vote, are fallacious. Finally, plaintiff attributed its adherence to the all at-large concept to the municipal Charter's limitation on the power of the Council to alter the electoral system. Yet, within eight months, the Charter was amended so as to permit a new method of electing council members.

The justifications which Port Arthur has offered with respect to the 4-4-1 plan are similarly specious.[166] Initially, we note that it is quite tenuous for plaintiff to suggest that an association which the City's residents made between the ward system and corruption in the 1950's still governs attitudes toward electoral plans in 1981. Hence, we proceed to the consideration of plaintiff's second and more important contention that the "purpose of the 4-4-1 plan was to enhance minority voting strength, while preserving the legitimate benefits of the at-large system." We find, however, that any intention to increase the amount of representation that the black community could obtain was overriden by the desire of white Port Arthurians to maintain undisputed control of the municipal government. Furthermore, as we have demonstrated, plaintiff would have more successfully prevented the dilution of the Hispanic vote by creating more single-member district seats.

Lastly, although we recognize that at-large elections often produce representatives who are "more responsive to, and characteristic of, the interests of the entire city," *City of Petersburg*, 354 F. Supp. at 1027, such is not the situation in the instant case. The council members who have been elected at large in the past have proven far more responsive to, and characteristic of, the interests of their

---

[166] *See* Plaintiff's Brief at 26-27.

white constituency than to those of the black minority. As long as the whites remain in the majority and racial bloc voting continues to be prevalent, City officials may be elected at large by their white supporters alone, and they will have no incentive to address the problems of a significant segment of the City of Port Arthur, the black community.

III. CONCLUSION

For the foregoing reasons, we deny plaintiff City of Port Arthur's requests for declaratory judgments in Counts I, II and III as to Ordinance No. 80-02 establishing the 8-0-1 plan, Ordinance No. 80-70 declaring the results of the referendum election at which the 4-4-1 plan was adopted, and Ordinance Nos. 77-118 and 77-119 creating advisory councils from the former municipalities of Pear Ridge and Lakeview. We so decide because plaintiff has failed to demonstrate that the implementation of these three voting changes can be accomplished without the effect of denying or abridging the right to vote on account of race, color or language-affiliation. In addition, preclearance of the 8-0-1 plan and the 4-4-1 plan is denied because the preponderance of the evidence reveals that the development of these electoral systems was infected by a discriminatory purpose.

With respect to the consolidation with Pear Ridge and Lakeview and the annexation of Sabine Pass, we find that plaintiff acted without an illegal invidious purpose. The expansion of the City significantly diluted the voting power of the black minority, however, and Port Arthur has failed to show that any of the electoral systems which it has adopted assure the minority population an opportunity to elect representation reasonably equivalent to its electoral strength in the enlarged community. Therefore, we withhold approval of the territorial expansion until plaintiff has devised a new voting plan which satisfies the concerns expressed in our opinion.

In *City of Petersburg*, we conditioned preclearance of the annexation in question upon the adoption of a fairly-drawn single-member district plan. Although the Attorney General has suggested the same solution throughout this litigation, we hesitate to issue such an order. Our reluctance stems from our desire to minimize the intrusion of this federal court into the affairs of the City and from the indication in *Beer v. United States* that we are without the authority to affect the at-large rule directly. *See City of Rome*, 472 F. Supp. at 248. Instead, we will permit the City to develop an electoral system of its own design. In view of the extraordinary delay that has occurred since April, 1977, when councilmanic elections were last held in Port Arthur, however, we must require that plaintiff present this Court with an acceptable proposal within fifteen (15) days. We retain jurisdiction to insure that our will is carried out as expeditiously as possible.

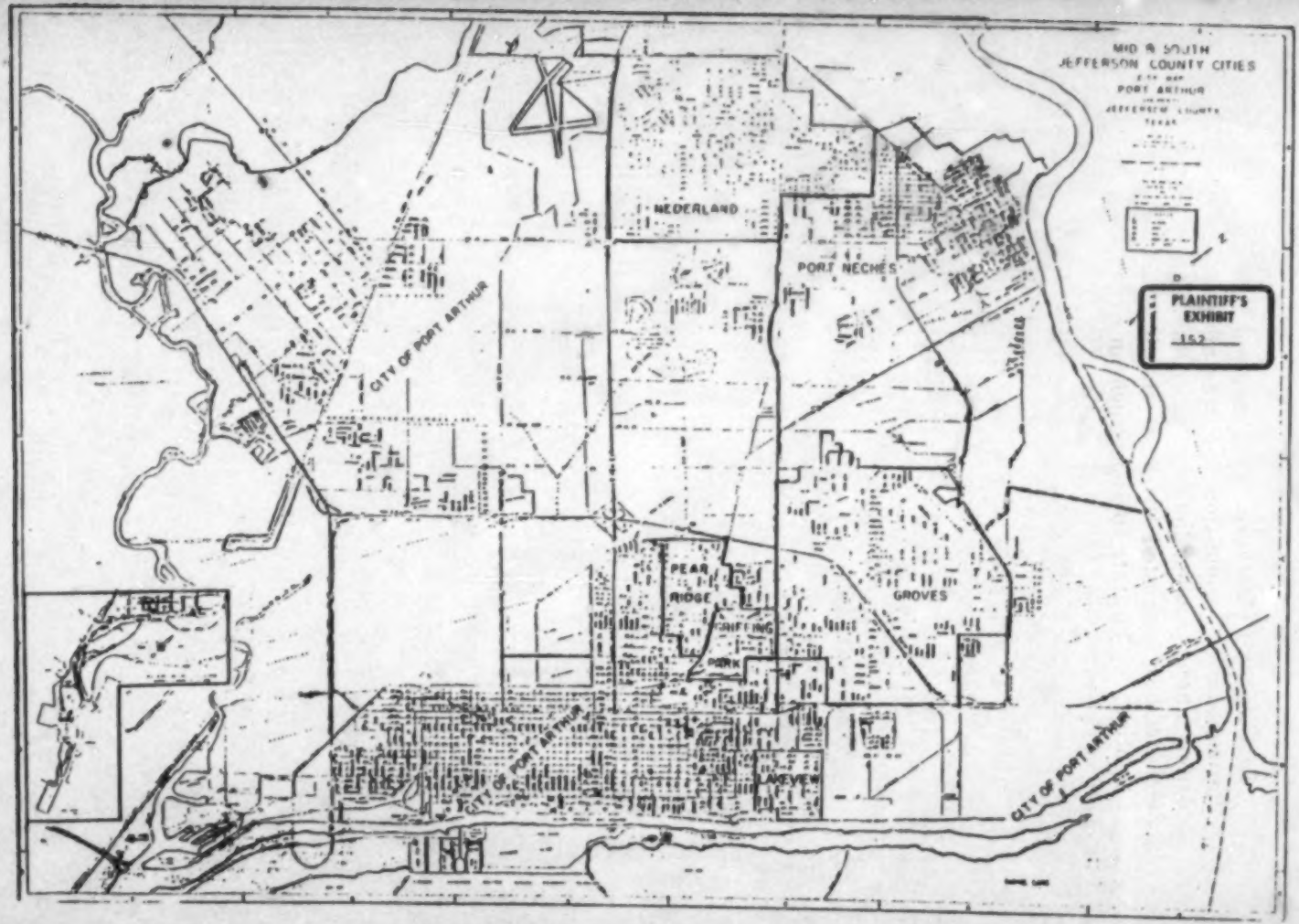
An order and judgment in accordance with the foregoing shall be issued of even date herewith.

/s/ J. Skelly Wright
J. Skelly Wright
United States Circuit Judge

/s/ John Lewis Smith, Jr.
John Lewis Smith, Jr.
United States District Judge

/s/ Charles R. Richey
Charles R. Richey
United States District Judge

APPENDIX A


MID & SOUTH
JEFFERSON COUNTY CITIES
PORT ARTHUR
TEXAS
NEDERLAND
PORT NECHES
CITY OF PORT ARTHUR
PLAINTIFF'S
EXHIBIT
152
PEAR
RIDGE
GROVES
DRIFTING
PARK
LAKEVIEW
CITY OF PORT ARTHUR
CITY OF PORT ARTHUR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-0648

CITY OF PORT ARTHUR, TEXAS, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *et al.*, *Defendants*.

ORDER

Filed June 12, 1981

In accordance with the memorandum opinion issued of even date herewith, it is, by the Court, this 12th day of June, 1981,

ORDERED, that plaintiff City of Port Arthur's request in Count I for a declaratory judgment that Ordinance No. 80-02 establishing the 8-0-1 plan is without discriminatory purpose or effect be, and the same hereby is, denied; and it is

FURTHER ORDERED, that plaintiff's request in Count II for a declaratory judgment that Ordinance No. 80-70 declaring the referendum vote in favor of the 4-4-1 plan is without discriminatory purpose or effect be, and the same hereby is, denied; and it is

FURTHER ORDERED, that plaintiff's request in Count III for a declaratory judgment that Ordinance Nos. 77-118 and 77-119 creating the Pear Ridge and Lakeview Advisory Councils are not subject to the preclearance requirement of section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, be, and the same hereby is, denied; and it is

FURTHER ORDERED, that plaintiff's request in Count III for a declaratory judgment that Ordinances 77-118 and 77-119 creating the Pear Ridge and Lakeview Advisory

Councils are without discriminatory purpose or effect be, and the same hereby is, denied; and it is

FURTHER ORDERED, that the consolidation with Pear Ridge and Lakeview and the subsequent annexation of Sabine Pass be, and the same hereby are, approved on the condition that plaintiff adopt a new electoral system that satisfies the concerns expressed in the accompanying memorandum opinion; and it is

FURTHER ORDERED, that plaintiff must submit to the Court within fifteen (15) days of the date of this Order a written proposal detailing the steps that will be taken to adopt a new electoral system.

/s/ J. SKELLY WRIGHT
J. Skelly Wright
United States Circuit Judge

/s/ JOHN LEWIS SMITH, JR.
John Lewis Smith, Jr.
United States District Judge

/s/ CHARLES R. RICHEY
Charles R. Richey
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-0648

CITY OF PORT ARTHUR, TEXAS, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *et al.*, *Defendants*.

ORDER

Filed July 14, 1981

This matter is before the Court upon the joint submission of the City of Port Arthur and the United States. Pursuant to the Opinion of this Court issued on June 12, 1981, those two parties have presented for our approval a "4-2-3" councilmanic election plan which involves six single-member seats and three at-large seats. Four representatives will be elected from the four single-member districts, Districts 1 through 4, into which the City is divided. Then, one council member will be chosen by District 5 which is a combination of Districts 1 and 4 and another by District 6 which is a combination of Districts 2 and 3. Finally, three individuals will be elected at-large; two must reside in Districts 5 and 6 respectively, and the third place which will be filled by the mayor has no residency requirement. Under this plan, all of these races will be conducted on the majority vote principle.

After considering the joint submission, intervenor-defendants' response thereto, and the oral argument of all counsel; it appears to the Court that the proposed plan insufficiently neutralizes the adverse impact upon minority voting strength which resulted from the expansion of Port Arthur's borders. If the 4-2-3 plan were modified, however, so as to provide for the election of the two non-mayoral, at-large representatives by plurality vote, we would con-

sider the defect remedied and offer our approval. The Voting Rights Act of 1965, 42 U.S.C. § 1973c (Supp. 1974-1980), requires no less.

Accordingly, it is, by the Court, this 13th day of July, 1981,

ORDERED that the 4-2-3 plan proffered by plaintiff City of Port Arthur and defendant United States be, and the same hereby is, approved on the condition that the two non-mayoral, at-large representatives be elected by plurality vote; and it is

FURTHER ORDERED that the charter change election and the special councilmanic election planned for August and September, 1981, shall proceed as scheduled; and it is

FURTHER ORDERED that this Court retains jurisdiction in order to insure that our Orders are carried out as expeditiously as possible.

/s/ J. SKELLY WRIGHT
J. Skelly Wright
United States Circuit Judge

/s/ CHARLES R. RICHEY
Charles R. Richey
United States District Judge

I dissent from the contents of this Order for the reasons stated below.

/s/ JOHN LEWIS SMITH, JR.
John Lewis Smith, Jr.
United States District Judge

I dissent on the basis of the Court's opinion of June 12, 1981, and the joint submission of the City of Port Arthur and the United States. I agree with the position of the United States that the City's proposed plan, as amended, meets the requirements previously imposed by this Court. The plan should be approved without condition.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-0648

CITY OF PORT ARTHUR, TEXAS, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *et al.*, *Defendants*.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Filed July 21, 1981

Notice is hereby given that the City of Port Arthur, Texas, the plaintiff above-named, hereby appeals to the Supreme Court of the United States from the final order, entered in this action on July 14, 1981, rejecting plaintiff's 4-2-3 councilmanic election plan. The election plan was submitted to the Court for preclearance under Section 5 of the Voting Rights Act of 1965.

This appeal is taken pursuant to 42 U.S.C. § 1973c (Supp. 1974-1980).

James Douglas Welch
Counsel for the City of
Port Arthur
Wald, Harkrader & Ross
1300 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 828-1200

VOTING RIGHTS ACT OF 1965, 42 U.S.C. § 1973c

§ 1973c. Alteration of voting qualifications and procedures; action by state or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court, appeal to Supreme Court

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, pre-

requisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-0648

CITY OF PORT ARTHUR, TEXAS, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *Defendant*,
ABRAHAM DOUGLAS, et al., *Defendants-Intervenors*.

JOINT SUBMISSION OF THE CITY OF PORT ARTHUR AND THE UNITED STATES

The City of Port Arthur, by signature of its counsel below, hereby amends its proposed election plan contained in its Report to the Court filed on June 29, 1981. The two at-large council positions designated as positions seven (7) and eight (8) will be replaced by residency districts seven (7) and eight (8). The boundaries of these residency districts will be identical to those of single-member districts five (5) and six (6).

The United States, pursuant to the Court's order of June 30, 1981, views the city's proposed plan as substantially complying with the requirements set out by this Court in the memorandum opinion of June 12, 1981. The United States agrees that the plan will allow blacks a reasonable opportunity to elect representatives of their choice in three of the six single-member districts (Districts 1, 4 and 5). This opportunity for the black community to elect candidates of its choice to 33% of the council positions compares favorably with the Court's determination that blacks constitute 40.56% of the total population and approximately 35% of the voting age population in the post-annexation City of Port Arthur. Thus, the single-member districts in the city's plan would appear to provide the minority community with a fair opportunity to obtain

"representation reasonably equivalent to their political strength in the enlarged community." *City of Richmond* v. *United States*, 422 U.S. 358, 370 (1975).

The one possible area for concern in the city's plan, in the United States' view, is that the plan continues to utilize the at-large concept for the election of two council-members plus the mayor. Since this Court has found, in examining the previous election plans, that "the black population effectively has no opportunity to elect at-large council members"[1] (Slip Op. at 45), the at-large features of this plan were subjected to close scrutiny prior to the filing of these comments. While the question is a close one, in the view of the United States the limited use of at-large seats in the proposed plan does not require the denial of the plan's preclearance. As noted previously the plan does allow the minority community an opportunity to obtain representation reasonably equivalent to their political strength in the enlarged city, and even if the city determined to elect eight council members (all except the mayor) from single-member districts it does not appear that minority representation would increase appreciably.[2] Thus, in the context of the six single-member districts, the at-large features of the plan do not have the same discriminatory impact as the at-large featuers of the city's earlier plans.

It should also be noted, however, that the application of a majority vote requirement to the at-large seats will

---

[1] The Court also found that the effect of the at-large seats "is exacerbated by the majority vote and residency requirement . . . [which] undermine the possibility of electing a councilmember of the minority's choice by singleshot voting," (Slip Op. at 45).

[2] If a fairly drawn plan providing for eight single-member districts were devised it appears likely that the minority community would have a reasonable chance of electing representatives in three of the districts; and the minority population in a fourth district may be sufficiently high to exert a "swing vote" influence.

make it more difficult, given the existing patterns of racial bloc voting, for the minority community to influence the selection of persons to fill those seats. Minority influence on those positions would be increased if the two at-large seats (excluding the mayor) were run on a plurality win system. The city has determined not to incorporate the plurality win provision into the at-large seats. The United States, however, does not believe that the decision rises to a level of significance which would justify denying Section 5 preclearance.

The United States also believes that the amendment to the plan which the City makes by this joint submission is a positive one. The residency district on the west side of town is approximately 70% black in total population and the addition of the residency requirement will thus assure that one of the at-large representatives will reside in, and hopefully represent the interest of, the portion of the city where a sizable majority of the black population resides.

For the above reasons, the United States believes that the City's proposed plan, as amended, meets the requirements imposed by the Court in the June 12, 1981 opinion and that the plan should receive the necessary Section 5 preclearance.

Respectfully submitted,

For the Plaintiff City of Port Arthur:

James D. Welch

For the Defendant United States of America:

Robert S. Berman

Filed July 8, 1981

Joint Appendix

FILED
MAR 19 1982
ALEXANDER L. STEVAS

No. 81-708

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

CITY OF PORT ARTHUR, TEXAS, *Appellant*,

v.

UNITED STATES OF AMERICA

and

ABRAHAM DOUGLAS, ELGIE JENKINS, WALTER MOSLEY, and WILLIE LEWIS, *Appellees*.

On Appeal from the United States District Court for the District of Columbia

---

JOINT APPENDIX

ROBERT Q. KEITH
MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Building
Beaumont, Texas 77701
(713) 835-5011

Counsel of Record for Appellant

JAMES DOUGLAS WELCH
MICHAEL K. HAMMAKER
POPHAM, HAIK, SCHNOBRICH, KAUFMAN & DOTY, LTD.
2000 L Street, N.W., Suite 802
Washington, D.C. 20036
(202) 887-5154

REX E. LEE
Solicitor General

WM. BRADFORD REYNOLDS
Assistant Attorney General

WALTER W. BARNETT
MARIE E. KLIMESZ
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

[Additional Counsel Listed Inside Cover]

Appeal Docketed July 21, 1981.
Probable Jurisdiction Noted January 25, 1982.

GEORGE WIKOFF
City Attorney of Port Arthur
P.O. Box 1089
Port Arthur, Texas 77640

Attorneys for Appellant

ELIZABETH K. JULIAN
MICHAEL M. DANIEL
East Texas Legal Services
8204 Elmbrook, Suite 200
Dallas, Texas 75247
(214) 638-4276

Counsel of Record for Appellees

NORMAN J. CHACHKIN
Lawyers' Committee for
Civil Rights Under Law
733 15th Street, N.W.
Washington, D.C. 20005
(202) 628-6700

ELIZABETH C. PETIT
East Texas Legal Services
P.O. Box 2552
Beaumont, Texas 77704

DON FLOYD
1015 East Gulfway Drive
Port Arthur, Texas 77604

Attorneys for Appellees

INDEX

	Page
Chronological List of Relevant Docket Entries	ii
Memorandum Opinion and Order of the District Court, Filed June 12, 1981	1a
Joint Submission of the City of Port Arthur and the United States to the District Court, Filed July 8, 1981	79a
Intervenors' Response to Proposed Plan, Filed July 9, 1981	83a
Order of the District Court, Filed July 14, 1981	87a
Notice of Appeal to the Supreme Court of the United States, Filed July 21, 1981	89a
STATUTES AND ORDINANCES:	
Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c	91a
City of Port Arthur, Texas Ordinance No. 2877	93a
City of Port Arthur, Texas Ordinance No. 2882	103a
City of Port Arthur, Texas Ordinance No. 2949	106a
City of Port Arthur, Texas Ordinance No. 2996	110a
City of Port Arthur, Texas Ordinance No. 2999	119a
City of Port Arthur, Texas Ordinance No. 66-31	121a
City of Port Arthur, Texas Ordinance No. 67-19	125a
City of Port Arthur, Texas Ordinance No. 68-11	129a
City of Port Arthur, Texas Ordinance No. 69-07	133a
City of Port Arthur, Texas Ordinance No. 69-12	141a
City of Port Arthur, Texas Ordinance No. 70-29	143a
City of Port Arthur, Texas Ordinance No. 70-39	150a
City of Port Arthur, Texas Ordinance No. 71-24	152a
City of Port Arthur, Texas Ordinance No. 72-39	156a
City of Port Arthur, Texas Ordinance No. 73-23	160a
City of Port Arthur, Texas Ordinance No. 74-17	164a
City of Port Arthur, Texas Ordinance No. 75-17	168a
City of Port Arthur, Texas Ordinance No. 76-26	172a
City of Port Arthur, Texas Ordinance No. 77-29	176a
City of Port Arthur, Texas Ordinance No. 77-116 ...	180a

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

March 12, 1980—Plaintiff City of Port Arthur's Complaint filed in U.S. District Court for the District of Columbia.

April 22, 1980—Answer of the Defendant United States of America.

May 28, 1980—Motion to Intervene of Defendants Abraham Douglas, Elgie Jenkins, Walter Mosley, and Willie Lewis.

May 28, 1980—Answer of Defendant-Intervenors.

July 16, 1980—Order of the District Court granting Defendant-Intervenors' Motion to Intervene.

September 15, 1980—Motion of Plaintiff City to Amend Complaint and Amended Complaint.

September 29, 1980—Answer of Defendant United States to Amended Complaint.

October 7, 1980—Order of the District Court granting Plaintiff City's Motion to Amend.

June 12, 1981—Memorandum Opinion and Order of the District Court denying approval of Plaintiff City's proposed 8-0-1 and 4-4-1 election plans.

June 29, 1981—City of Port Arthur's Report to the Court Pursuant to Order of June 12, 1981.

July 8, 1981—Joint Submission of the City of Port Arthur and the United States requesting District Court approval of the 4-2-3 election plan.

July 9, 1981—Defendant-Intervenors' Response to Proposed [4-2-3] Plan.

July 14, 1981—Order of the District Court denying approval of the proposed 4-2-3 plan.

August 6, 1981—Stipulation and Order of the District Court providing for interim elections in Port Arthur.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-0648

CITY OF PORT ARTHUR, TEXAS, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *et al.*, *Defendants*.

Before J. SKELLY WRIGHT, Circuit Judge, JOHN LEWIS SMITH, JR., District Judge, and CHARLES R. RICHEY, District Judge.

Robert Q. Keith, Mehaffy, Weber, Keith & Gonsoulin, Beaumont, Tex., for plaintiff, with whom were George Wikoff, City Attorney, Port Arthur, Tex., and James D. Welch and Greer S. Goldman, Wald, Harkrader & Ross, Washington, D.C.

J. Gerald Hebert and Robert S. Berman, Attorneys, U.S. Department of Justice, Washington, D.C., for defendant United States of America, with whom were Drew S. Days, Assistant Attorney General, and Gerald W. Jones and Paul F. Hancock, Attorneys, U.S. Department of Justice, Washington, D.C.

Elizabeth K. Julian and Michael M. Daniel, East Texas Legal Services, Dallas, Tex., for intervenor-defendants Abraham Douglas, et al., with whom was Norman J. Chachkin, Lawyers' Committee for Civil Rights Under Law, Washington, D.C.

Filed June 12, 1981

MEMORANDUM OPINION

CHARLES R. RICHEY, District Judge

This is an action for declaratory relief brought under section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (Supp. 1974-1980).[1] Unless a state or political sub-

---

[1] Section 5 provides:

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)2 of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard,

division receives the approval of the Attorney General of the United States for a change in its voting standards, practices or procedures, section 5 requires that the entity must demonstrate to a three-judge panel of the United States District Court for the District of Columbia that the change it seeks to enforce has neither the purpose nor effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Plaintiff City of Port Arthur, Texas, has filed this suit in order to obtain a declaration upholding the validity of several voting changes occasioned by the expansion of the boundaries of the City, by the City's adoption of two new electoral plans for the enlarged community, and by the establishment of elected advisory councils for two of the added areas.

---

practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

With the consent of the parties,[2] evidence consisting of numerous depositions, exhibits, and the in-court testimony of several witnesses was initially presented to a single judge. Complete copies of the record were then distributed to the two other judges. Ultimately, the full three-judge court heard oral argument on all aspects of the case.

Upon consideration of the entire record herein, we conclude that plaintiff's request for a declaratory judgment must be denied. Although we are convinced that the territorial expansion was accomplished without a discriminatory purpose, the subsequently adopted election plans were fatally infected by such an intent. Moreover, the implementation of any of the voting schemes presented would most probably have the effect of abridging the electoral rights of Port Arthur's minority communities. With respect to the advisory councils, we find the absence of a discriminatory purpose and the presence of a discriminatory effect. The opinion which follows sets forth our findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

I. FACTUAL FINDINGS

A. General Background

Plaintiff City of Port Arthur ("Port Arthur" or "the City") is a municipality located on the southeastern boundary of the State of Texas. It lies approximately 90 miles east of Houston in the southern portion of Jefferson County on the salt-grass marshland adjacent to the Gulf of Mexico. Sabine Lake and the Sabine-Neches waterway border the City on the south while the municipalities of

---

[2] Plaintiff City of Port Arthur originally sued the United States of America for a declaratory judgment. Shortly thereafter, four black residents of Port Arthur, Abraham Douglas, Elgie Jenkins, Walter Mosely, and Willie Lewis, were granted permission to intervene as party-defendants.

Nederland, Groves, and Port Neches pose a barrier to the north and east. West of Port Arthur is a wildlife management area and several large petroleum complexes. Due to the location of the City and the resources at hand, the population is primarily engaged in oil refining, petrochemical manufacturing, sea-faring, and related occupations.[3]

Within the general area occupied by Port Arthur are four communities which are of central concern in this litigation. The Town of Lakeview ("Lakeview"), the City of Griffing Park ("Griffing Park"), and the City of Pear Ridge ("Pear Ridge") are all incorporated entities covering less than one square mile each. Lakeview overlooks Lake Sabine and is surrounded on all sides by Port Arthur. Situated one mile to the north is Griffing Park which edges Groves on the east and Pear Ridge on the north-west but is otherwise enveloped by the plaintiff City. Aside from its shared border with Griffing Park, Pear Ridge is totally enclosed by Port Arthur. Finally, there is a fourth unincorporated area known as Sabine Pass which is situated eight miles to the south of the City.[4]

According to the figures published by the United States Bureau of Census, the total population of the City of Port Arthur has been decreasing from 66,676 in 1960 through 57,371 in 1970 to 54,485 in 1980.[5] Simultaneously, the per-

---

[3] Amended Joint Statement of Undisputed Material Facts ("A.J.S.") ¶¶ 2, 88, 89. *See* Appendix A. References to "north" in this opinion should technically be to "north-north-west"; all other directions should be adjusted accordingly.

[4] *See* Appendix A.

[5] The 1960 population statistics were obtained from A.J.S. ¶ 7. The demographic data for 1970 was derived from A.J.S. ¶¶ 9-10, 17-18, 25-26, 29, 68-69 and Exhibit ("Exh.") 95. Finally, although the parties have submitted estimates for 1979 and 1980 prepared by demographers Lyle Vickers and Thomas Hofeller respectively,

centage of the municipal population comprised by blacks has increased significantly; the black proportion of the

---

see Exh. 49, 52, 87, 112-13, the Court must rely upon "the most current available population data," the official figures provided in the 1980 Census. *City of Rome, Georgia v. United States*, 100 S. Ct. 1548, 1567 (1980). The 1980 Census was first published after trial, but, with the consent of the parties and in accordance with the law, we take judicial notice of that information. *See Mitchell v. Rose*, 570 F.2d 129, 132 n.2 (6th Cir. 1978), *rev'd on other grounds sub nom. Rose v. Mitchell*, 443 U.S. 545 (1979); *Goins v. Allgood*, 391 F.2d 692, 697 (5th Cir. 1968); Fed. R. Evid. 201(f); Defendant United States of America's Request to Take Judicial Notice of the 1980 Census (filed April 3, 1981) ("Defendant's Request to Take Judicial Notice"); Plaintiff's Reply to Defendant's Supplemental Pleading Regarding 1980 Census at 1 (filed April 22, 1981) ("Plaintiff's Reply to Defendant's Supplemental Pleading").

The 1970 and 1980 Census statistics break down as follows:

	Port Arthur	*Pear Ridge*	*Lake-view*	*Sabine Pass*	*Total*
			1970 Census		
Total	57,371	3,697	3,567	1,143	65,778
Black	22,994	2	1	100	23,097
% Black	40.01%	0.05%	0.03%	8.75%	35.11%
Mex-Am	3,809	411	309	0	4,529
% Mex-Am	6.64%	11.12%	8.66%	0.00%	6.88%
VAP	37,636	2,405	2,474	696	43,211
Black VAP	13,033	2	0	61	13,096
% Black VAP	34.62%	0.08%	0.00%	8.76%	30.31%
			1980 Census		
Total	54,485	3,091	2,917	501	60,994
Black	24,630	12	68	31	24,741
% Black	45.21%	0.39%	2.33%	6.19%	40.56%
Mex-Am	3,120	353	352	18	3,843
% Mex-Am	5.73%	11.42%	12.07%	3.59%	6.30%

In compiling the above chart, the Court encountered several problems. First, the only VAP figures available are those presented in the 1970 Census; neither the estimates nor the 1980 Census in-

population was 30.79% in 1960, 40.01% in 1970, and 45.21% in 1980. In addition, several other minorities have always contributed a small fraction of the population. Between 6 and 7% of all Port Arthurians, for example are of Spanish origin. Although current statistics as to the number of individuals of voting age in each of these groups are unavailable, the 1970 Census revealed that the total voting-age population ("VAP") was 37,636 of whom 13,033 or 34.62% were black.

By contrast, the four communities mentioned above have far fewer and predominantly white residents.[6] The total population of Pear Ridge, Lakeview and Sabine Pass, for

---

clude such information. Second, the 1970 VAP count for Sabine Pass was not to be found in the record, and, therefore, we have extrapolated from the relevant numbers. More specifically, the total VAP for Sabine Pass was calculated by subtracting the VAP's for Port Arthur, Pear Ridge and Lakeview from that of the expanded City, and then that total was multiplied by the 8.75% of Sabine Pass population comprised by blacks. The third problem results from the difference in the 1980 Census analyses prepared by defendant United States and plaintiff. *See* Defendant's Request to Take Judicial Notice; Plaintiff's Reply to Defendant's Supplemental Pleading. We agree with the United States that the 201 individuals in census tracts 51.99, 66.99 and 116.99 who are crew members on vessels in the Port of Port Arthur should be excluded from our computations because of the improbability that they would be present to vote in a municipal election. *See* affidavit of Robert S. Berman at 4 (April 3, 1981). However, we do not accept plaintiff's suggestion that the residents of Spanish origin be subtracted from the "white" population. *See* affidavit of Lyle Vickers at 3 (April 20, 1981). It is true that Port Arthurians of Spanish descent appear to be double counted, but the Court does not believe that such individuals are always included in the "white" population. Census tract 57, for example, contains 7 persons of Spanish origin, but it has only 4 white inhabitants.

[6] *See* note 5 *supra*. Griffing Park housed 2,075 people of whom 4 were black in 1970.

example, was 8,407 in 1970 and only 6,509 in 1980.[7] In those same areas, blacks numbered 103 or 1.23% and Mexican-Americans, 720 or 8.56% in 1970; by 1980, there were 111 or 1.71% black and 723 or 11.11% Hispanic citizens. Individuals of voting age totalled only 5,575 of whom 63 or 1.13% were black in 1970.

B. Historical Background of Port Arthur

1. Political history to 1963

The City of Port Arthur was founded in 1898, and it has operated under its own Charter since March 8, 1932, in accordance with the so-called "home-rule amendment" of the Texas Constitution.[8] City officials were elected by at-large vote until 1954.[9] Then between 1954 and 1963, Port Arthur adopted the commission-manager form of government and the single-member district or ward system.[10] Each of the seven commissioners was required to be a resident of the district which he or she represented, and each was elected by only the qualified voters in the district. The commissioners served two year terms with four of the commissioners elected at one time and the remaining three elected the following year. It was necessary that candidates receive a majority of the vote in order to get elected. Following each election, one of the seven commissioners was selected by the commission to serve as mayor.

Throughout the period when this single-member district plan was in effect, the districts were essentially drawn on a north-south axis parallel to the named avenues of the

---

[7] Griffing Park has been excluded from these totals because it never joined with the City of Port Arthur as did the other areas in question.

[8] A.J.S. ¶¶ 87, 93-94.

[9] A.J.S. ¶ 95.

[10] A.J.S. ¶ 3.

City.[11] The black population was heavily concentrated in District 1, the area west of Houston Avenue,[12] and the commission regularly included a single black member elected from that district between 1954 and 1963.[13] Beginning with the construction of the first urban renewal project in 1957, a significant number of blacks began to move eastward across Houston Avenue into the traditional white residential areas which constituted the other election districts.[14] By 1960, it appeared that District 2 was going to become as predominantly black as District 1.[15]

In 1963, however, the results of a Charter change referendum compelled the City to alter the form of government.[16] From that time on, Port Arthur has been governed by a seven-member council and a professional manager who operates the City and carries out the policies of the City Council.[17] According to the so-called 6-0-1 plan,[18] six of the council members are each required to live in newly-

---

[11] Trial Transcript I, 95-96, 98-99 (November 24, 1980) (testimony of George Dibrell). The trial transcript in this proceeding was not paginated consecutively over both days of trial. Consequently, the Court will refer to the two volumes of the transcript in the following manner: Tr. I for the transcript of November 24, 1980, and Tr. II for the transcript of November 25, 1980. *See also* Exh. 121.

[12] United States Preliminary Proposed Findings of Fact and Conclusions of Law ("U.S.P.F.") ¶ 31 (admitted); Evans Deposition ("Dep.") 7, 10, 12; Freeman Dep. 5-6; Guidry Dep. 5, 20.

[13] Guidry Dep. 5-6, 9-10.

[14] A.J.S. ¶ 30; U.S.P.F. ¶¶ 32-34 (admitted); Tr. I, 96-98 (testimony of George Dibrell).

[15] Tr. I, 98 (testimony of George Dibrell).

[16] A.J.S. ¶¶ 4, 101.

[17] A.J.S. ¶¶ 4, 104.

[18] A.J.S. ¶¶ 4, 105-08, 113.

drawn residency districts including the old District 1, three new districts drawn along an east-west axis, and two additional districts covering the large area to the north.[19] In order to win a seat, however, a candidate has to be elected by a majority of all of the qualified voters in the City. The seventh position, the mayoral place is similarly filled by an at-large contest, but the mayor is not required to reside in any particular district. Although the mayor bears certain ceremonial and "political" responsibilities not shared by the other members of the Council, he casts a vote on each matter under consideration just as his fellow officials do.[20] Each year, three council members are elected, and the three others along with the mayor are voted on the following year.

This Charter amendment was overwhelmingly approved by the citizens of Port Arthur who cast 6,829 votes in its favor and lodged only 1,022 votes against it; blacks and whites alike supported the measure.[21] In an effort to explain the motivation for this change, plaintiff demonstrated that Port Arthur had been plagued by widespread corruption while the single-member district plan was extant.[22] Whether or not the ward system actually spawned the illegal activities, the citizens of Port Arthur believed that there was such a connection.[23] No justification was offered, however, for the redrawing of district boundaries along east-west lines. The record bears witness to the fact that

---

[19] *See* Exh. 122, 124.

[20] Exh. 133, Part 20 at 7-8; Sadler Dep. I (October 24, 1980), 114-15.

[21] A.J.S. ¶¶ 102-03; Tr. I, 28-29 (testimony of George Dibrell); Guidry Dep. 78; Sadler Dep. I, 184-85.

[22] Exh. 148; Tr. I, 16-17 (testimony of George Dibrell); Hayes Dep. 10-11; Sadler Dep. I, 181-87.

[23] Tr. I, 16-17 (testimony of George Dibrell); Guidry Dep. 79; Hayes Dep. 10-12; Sadler Dep. I, 181-85.

this redistricting had the effect of maintaining the concentration of blacks in District 1 while simultaneously fragmenting the growing black population east of Houston Avenue in Districts 2, 3, and 4 by combining it with the larger white population on the east side of the City.[24] Consequently, a minority candidate from the western portion of District 2, 3, or 4 would face a white opponent from the east.

2. 1963 to 1977

Under the at-large system, Port Arthur received national recognition when nominated as an All American City in 1970 and when given the award of the National Municipal League in 1973.[25] Nevertheless, racial tension festered beneath the surface. As blacks moved east across Houston Avenue, whites moved further east and even out of the City into the surrounding townships.[26] Between 1960 and 1970, the non-black population in Port Arthur diminished from 46,145 to 34,377.[27] There is some suggestion in the record that the outmigration was motivated by the decreased hiring of the local oil refineries and the high cost of living in Port Arthur,[28] but these factors would have impacted on blacks as much as whites and there is no evidence that blacks were leaving the City. On the other hand, there was overwhelming testimony that the white exodus was prompted by racial considerations. A 1969 study commissioned by the municipal government revealed that the most frequent negative comment of Port Arthurians with respect

---

[24] Tr. I, 99 (testimony of George Dibrell). *See* Exh. 122, 124.

[25] Exh. 133, Part 8 at 24; Exh. 144.

[26] Evans Dep. 8-9, 12; Green Dep. 7-8; Sadler Dep. II (November 6, 1980), 7-11; Vickers Dep. II (October 23, 1980), 70-73.

[27] A.J.S. ¶ 7; Exh. 95.

[28] Evans Dep. 41-5; Sadler Dep. II, 7.

to their home was "too many minority group members."[29] Mayor Bernis Sadler and the City's demographic expert, Lyle M. Vickers, both attributed the outward movement to the court-ordered desegregation of the schools in 1970.[30] In 1973, the Port Arthur City Council received another study from a Chicago-based consulting group, the Public Administration Service ("PAS"), which also concluded that race was a reason for the outmigration of whites.[31] Thus, since 1960, Port Arthur appears to have suffered a classic case of "white flight".

On December 29, 1974, the situation was exacerbated when a black youth named Clifford Coleman was shot to death by a white Port Arthur policeman while escaping from police custody.[32] Plaintiff asserts that Coleman was escaping from "jail" as opposed to "police custody." Semantics aside, it is undisputed that the black youth was being booked for using abusive language when he broke away from the police officer who shot him as he ran.[33] The level of racial tension in the City increased significantly following the incident, and, for the first time, there was a community-wide reaction to what was perceived as a racially discriminatory act.[34] The black population of Port Arthur conducted rallies, held marches and attended community-wide meetings. Several businesses were burned, and at least one family armed itself in preparation for a conflict.[35] More peaceful protests included the

---

[29] A.J.S. ¶ 31.

[30] Sadler Dep. II, 7-8; Vickers Dep. II, 70-73.

[31] Exh. 133, Part 8; Greisinger Dep. 19-20, 30.

[32] U.S.P.F. ¶ 40 (admitted in part).

[33] *See, e.g.*, Exh. 145 at 20; Evans Dep. 50-51.

[34] A.J.S. ¶¶ 35-37; U.S.P.F. ¶¶ 41, 43 (admitted).

[35] U.S.P.F. ¶ 42 (admitted); Scott Dep. 8.

resignation of all the black members of the Port Arthur Chamber of Commerce and the refusal of a local black football star, Joe Washington, to accept an award from the Chamber.[36]

Although the tension level subsided somewhat in the years following the Coleman shooting, the effects of the incident continued to be felt in Port Arthur.[37] The municipal elections of April 2, 1977, for example, evidenced the unremitting racial hostility. Four council seats including that of the mayor were in contention, and in each race a white candidate confronted a black.[38] As part of their campaign effort against the slate of black candidates, members of the Port Arthur City Council placed a series of three full-page advertisements in the *Port Arthur News* on the three days preceding the election.[39] The ads warned about the efforts of the Rev. William Land "to rally the local black community to gain control of the city government." Specifically named as associates of Rev. Land were two black candidates; A. Z. McElroy was said to have brought him to Port Arthur and Paul Strawder was allegedly president of his congregation. Plaintiff City of Port Arthur subsequently characterized these ads as admonitions of an "outside takeover,"[40] but the language of the ads undeniably referred to a takeover by the local black community. Furthermore, each of the black councilmanic candidates in the 1977 election was a long-time resident of Port Ar-

---

[36] A.J.S. ¶ 38; Spencer Dep. 26.

[37] Evans Dep. 17-19, 53, 61; Hall Dep. 24; Huber Dep. 11-12; Sadler Dep. I, 101-02; Scott Dep. 10-11.

[38] A.J.S. ¶¶ 39-40.

[39] U.S.P.F. ¶ 55 (admitted); Exh. 9.

[40] U.S.P.F. ¶ 55 (admitted); Tr. I, 84-87 (testimony of George Dibrell).

thur.[41] Only Rev. Land was an "outsider," but he was not running for office.

In the ensuing election, the black slate narrowly lost every race.[42] By all accounts, the election results reflected severely polarized racial bloc voting; the phenomenon which occurs when white citizens vote for white candidates and black citizens cast their ballots for blacks.[43]

3. Consolidation with Pear Ridge and Lakeview

Almost immediately after the councilmanic elections of April 2, 1977, there was considerable discussion of the idea of consolidating Port Arthur with the surrounding white communities. The economic and administrative need for such action had been recognized at least since the 1940's.[44] Between 1940 and 1950, the City annexed two areas in order to increase the municipal population, and the people of Port Arthur supported an unsuccessful effort to annex the area now known as the City of Groves. In the next decade, Port Arthur annexed several areas including Port Acres, El Vista, Fairlea, Highland Heights and Foster Estates. The City again voted to consolidate with Groves in 1959,[45] but that effort and a 1956-57 campaign to join Port Arthur with Pear Ridge, Lakeview and Griffing Park failed. Among the factors motivating these efforts in the 1950's were the City's desires to increase its population for the 1960 Census, to facilitate construction of a seawall for the entire

---

[41] Exh. 10; McElroy Dep. 4.

[42] U.S.P.F. ¶ 56 (admitted); Exh. 8.

[43] U.S.P.F. ¶ 56 (admitted); *See, e.g.*, Tr. I, 207-08 (testimony of Joseph Zimmerman); Cotrell Dep. 20-21; Davidson Dep. 12-13; McManus Dep. I (October 6, 1980), 45.

[44] Exh. 16-17, 24; Tr. I, 12-15 (testimony of George Dibrell); Vickers Dep. I (October 6, 1980), 12-27.

[45] Exh. 149.

area, to improve streets and police and fire protection, and to attract business. Although the City continued its search for ways to increase its population, there was no expansion of the municipal boundaries between 1960 and 1970.[46]

In 1973, the Port Arthur City Council received the above-mentioned PAS report. Entitled "Intergovernmental Relations in the Greater Port Arthur Area," the study recommended that "the City of Port Arthur, and the surrounding municipalities should be consolidated to create a single governmental unit."[47] In order to accomplish such a reorganization, PAS counseled that "an intensive and deliberate effort to develop a broad consensus on the best available alternative to the status quo" was required. After this "painstaking research and proposal development," it would be necessary to enlist popular support by "a variety of promotional methods, suited to the diverse compositions of the electorate."

By 1975, members of the Port Arthur City Council began receiving inquiries about consolidation from private individuals residing in neighboring communities.[48] Specifically, City Manager Dibrell was approached by Ernest Askew, a resident of Pear Ridge, several times beginning in 1975 and continuing through April, 1977. According to Mr. Askew, the rising sewer and water rates in Pear Ridge and the increasing taxes sparked interest in consolidation with Port Arthur around 1975 or 1976.[49] Ron Gates also relayed the sentiment in Pear Ridge to Mr. Dibrell and Mayor Sadler in April, 1977, if not earlier. An inhabitant of Griffing Park, Brenda Drago, apparently contacted the City

---

[46] Vickers Dep. I, 27-29.

[47] Exh. 133, Part 8 at 67. *See also* A.J.S. ¶ 32.

[48] Tr. I, 46-48, 108-09 (testimony of George Dibrell); Sadler Dep. I, 53, 224.

[49] Askew Dep. 4-6.

Manager and the Mayor sometime after 1975. Finally, there was testimony that a movement in favor of consolidation began in Lakeview after 1975.[50] At that time, Cecil Hamilton and Lewis Foster talked with Mayor Sadler.

Despite the unqualified recommendation of PAS and the urgings of residents from the surrounding townships, no action was taken by the Port Arthur municipal government. The PAS consulting group was not contacted again until the time of trial, nor was any other study of consolidation commissioned before May, 1977.[51] The subject of consolidation was not even mentioned in the official minutes of the Port Arthur City Council from March 8, 1976, to April 4, 1977.[52]

Once the results of the April 2, 1977, municipal elections were known, however, the Port Arthur City Council pursued the issue of consolidation vigorously. On April 11, 1977, at the very next regular meeting of the Council, the former mayor of Port Arthur, R. B. McCollum, informed the members that "it is essential to unite and consolidate now more than ever before."[53] Later in the month, Port Arthur Mayor Sadler and City Manager Dibrell took an unprecedented action[54] by arranging three separate meetings with members of the all-white Pear Ridge, Lakeview and Griffing Park city councils at the Holiday Motel Restaurant in order to discuss citizen interest in consolidation and to explain the benefits which would accrue.[55]

---

[50] Hamilton Dep. 8-11, 14, 16-17, 23.

[51] A.J.S. ¶ 33; Greisinger Dep. 32.

[52] A.J.S. ¶ 41.

[53] Exh. 130.

[54] Hammond Dep. 12; Lindsey Dep. 43; Moser Dep. 24; Shaw Dep. 7.

[55] A.J.S. ¶ 42; U.S.P.F. ¶ 60 (admitted); Beckom Dep. 36-41; Hammond Dep. 10; Kleespies Dep. 14-17; Lindsey Dep. 35-46.

Whether or not the racial composition of Port Arthur and the political situation there were mentioned at those dinner meetings is the subject of considerable debate. Most of those who attended the meetings do not recall a discussion of the April 2, 1977, Port Arthur elections nor of race in general, however, several individuals remember references to the changing racial make-up of the City and the need to "stabilize" the population.[56] According to James Shaw, a member of the Griffing Park Council, Messrs. Sadler and Dibrell even declared that there was a possibility that blacks would take over the Port Arthur City Council,[57] but Mr. Dibrell later explained that such a statement, if any, related only to Rev. Land.[58] Recognizing that memory lapses with the passage of time and that many of these Town officials are "interested witnesses" with good reason to conceal the truth,[59] we conclude that there was some mention made of the racial situation in Port Arthur. Yet, we are not prepared to stand by the testimony of Mr. Shaw when no other witness corroborates it.[60] In all proba-

---

[56] Beckom Dep. 46-47, 49-50, 93; Goff Dep. 20; Kleespies Dep. 17; Shaw Dep. 10-11.

[57] Shaw Dep. 11-15.

[58] Tr. I, 76, 87 (testimony of George Dibrell).

[59] As leaders of the predominantly white communities which stood to gain much by consolidation with Port Arthur and as participants in the actual consolidation drive, these individuals certainly qualify as "interested witnesses" whose testimony is to be discounted. *See City of Richmond v. United States*, 422 U.S. 358, 377 (1975); *Hale County v. United States*, 496 F. Supp. 1206, 1217 (D.D.C. 1980).

[60] In their deposition testimony, Denise Hensley and Douglas Bedell, two reporters for the *Beaumont Enterprise*, also described statements allegedly made at the Hotel meetings by Mayor Sadler and City Manager Dibrell to the effect that consolidation was necessary in order to avert a black takeover of Port Arthur. *See also* Exh. 1, "Closed Talks Air South County Merger," *Beaumont*

bility, the Mayor and the City Manager merely made subtle reference to the racial composition of Port Arthur, but that was undoubtedly sufficient to remind the long-time residents of southern Jefferson County of the racial advantages of consolidation. Thus, race was included among the several factors cited at the dinner meetings in favor of a merger with the surrounding municipalities.

During the weeks which followed, Port Arthur officials participated in an active effort to provide information regarding consolidation to the surrounding municipalities because Texas law required the smaller city to first petition and vote for consolidation.[61] On May 9, 1977, the City Council authorized Mr. Dibrell to investigate the cities involved and to prepare a detailed statistical report on the cost of municipal services, local ad valorem taxes, home insurance costs, the positions and salaries of municipal employees, and other subjects.[62] The resulting "packet of information pertaining to the proposed consolidation" was then distributed in the neighboring communities.[63] It included a draft petition to be circulated in the affected township in order to initiate consolidation and a draft ordinance which would provide for the establishment of an advisory council from each of the three cities to the Port Arthur City Council. Throughout the summer months, Port Arthur City officials attended a series of public meetings in Pear Ridge,

---

Enterprise, May 5, 1977, at 1. By Order of December 17, 1980, however, this Court held that the deposition testimony of Ms. Hensley and Mr. Bedell and the article in the *Beaumont Enterprise* authored by them contained hearsay which was inadmissible to prove the truth of the matter asserted. Therefore, Mr. Shaw's statements are effectively without corroboration in the record.

[61] Plaintiff's Proposed Findings of Fact and Conclusions of Law ("P.P.F.") ¶¶ 13, 20 (admitted); U.S.P.F. ¶ 72 (admitted).

[62] A.J.S. ¶ 46; Exh. 84.

[63] U.S.P.F. ¶¶ 63-64 (admitted); Exh. 5.

Lakeview and Griffing Park to provide explanations and additional information.[64]

Plaintiff City of Port Arthur offered the surrounding municipalities a series of inducements to consolidate. One of the principal attractions held out to the adjacent communities was Port Arthur's recently decreased tax rate.[65] Prior to 1977, the municipal property tax on homeowners was significantly higher than that of its neighbors because the City Charter precluded the annexation of adjoining industrial properties. Port Arthurians amended the Charter in 1975, however, so as to permit the necessary annexations. By 1977, after the City had negotiated very favorable contracts involving substantially increased payments in lieu of taxes from the industrial property owners, the tax rate was greatly lowered. Therefore, it became possible for Port Arthur to promise the surrounding townships a reduction in their property taxes and a five-year freeze on the 1976 property assessments in use at the time.[66]

Consolidation also provided a vehicle for the neighboring areas to resolve various problems relating to water and sewage services.[67] For many years, each township had contracted with Port Arthur for these services, but legal disputes had developed over the prices charged. In addition, state and federal regulations implemented in 1976 required vast revisions to the water and sewer facilities in each city. Pear Ridge, Lakeview and Griffing Park did not have the financial resources to make the necessary capital improve-

---

[64] A.J.S. ¶ 47.

[65] Tr. I, 32-36 (testimony of George Dibrell); Sadler Dep. I, 208-11.

[66] Exh. 5; Beckom Dep. 94; Dibrell Dep. 84-88; Goff Dep. 9; Sadler Dep. I, 167-68.

[67] A.J.S. ¶¶ 43-45; P.P.F. ¶¶ 10-12 (admitted); U.S.P.F. ¶¶ 68-69 (admitted in part); Tr. I, 36-39 (testimony of George Dibrell).

ments. Although Port Arthur had the funds with which to comply with the new regulations, it was unwilling to renew the disputed and disadvantageous service contracts. If the municipalities consolidated, however, Port Arthur would furnish the capital for the required improvements and would absorb by operation of Texas law the legal liabilities owed to it.

Other municipal services were offered to the three townships as part of the consolidation package. The deteriorating firefighting units in the outlying communities were to be joined with Port Arthur's full-time professional fire department; the fragmented police protection was to be unified into a single, enlarged police force; and the public library was to be made available to everyone at no charge.[68] Little increase in cost was anticipated because of the location of existing fire stations and the size of the current police and firefighting forces. Without consolidation and an increased tax base, however, the City announced that it was not economically feasible to continue providing the above services.

Finally, Port Arthur City officials pledged that they would establish advisory councils to the City Council from Pear Ridge, Lakeview and Griffing Park.[69] For a five-year transition period commencing on the effective date of the consolidation, the elected members of these councils would have direct access to and influence on the decision-making process of the municipal government. Although individuals and groups from other areas of the City were free to contact members of the City Council, no official advisory councils were created to represent those areas.

The benefits of consolidation did not inure solely to the neighboring communities. Port Arthur, for example, was extremely interested in maintaining a population in excess

---

[68] A.J.S. ¶ 49; Tr. I, 52-4, 77-78 (testimony of George Dibrell); Sadler Dep. I, 60.

[69] A.J.S. ¶ 48; Sadler Dep. I, 70-73.

of 50,000 so as to remain entitled as a matter of right to funds from federal agencies including the Department of Housing and Urban Development ("HUD").[70] Were the population to decrease below the 50,000 level, HUD would diminish the amount of the direct grant by one-third each year; in the fourth year, the City would have to compete with other applicants for discretionary awards. Since 1975, the City had automatically received almost $10,000,000 in federal grants, but there was evidence that the municipal population was approaching the 50,000 mark. Between 1960 and 1970, the number of Port Arthurians had declined from 66,676 to 57,371. Before the dinner meetings at the Holiday Motel, City officials were in receipt of an estimate from the Office of Revenue Sharing indicating that there were only 53,557 residents in 1976 and population data published by the R. L. Polk Co. for the years 1972-75. In order to ensure federal funding for the foreseeable future, Port Arthur sought to consolidate with the surrounding municipalities. Having already annexed all of the adjacent black communities, the City turned to Pear Ridge, Lakeview and Griffing Park.

An increase in population also had other advantages for Port Arthur. Although the City would be required to provide services to the new residents, it was anticipated that the additional cost would be minimal and greatly outweighed by the increased tax revenue. The City Manager suggested that the economies were so apparent that it was unnecessary to prepare a detailed cost-benefit analysis.[71] Furthermore, Port Arthur hoped that the increased visibility resulting from consolidation would attract new businesses and thereby create new jobs.[72]

---

[70] P.P.F. ¶¶ 14-17 (admitted); Tr. I, 39-41 (testimony of George Dibrell); Vickers Dep. I, 34-39, 51-52.

[71] Tr. I, 53-54 (testimony of George Dibrell); Dibrell Dep. 39-41, 102-03.

[72] Exh. 3, 7, 48; Sadler Dep. I, 234; Spencer Dep. 19-20.

In June, 1977, separate petitions calling for an election on the issue of consolidation with Port Arthur were circulated and signed by citizens of Pear Ridge, Lakeview and Griffing Park.[73] At the referenda elections held on August 13, 1977, a majority of the citizens in Pear Ridge and Lakeview voted for consolidation, but the residents of Griffing Park voted against it.[74] City officials of Port Arthur including Mayor Sadler then began campaigning for consolidation within the City.[75] By a vote of 6,449 to 1,223, Port Arthurians approved consolidation with Pear Ridge in a referendum election held on November 8, 1977. At the same time, 6,353 residents of the City voted for consolidation with Lakeview, and 1,181 voted against it.[76] Although the white community almost unanimously supported the merger, black voters were divided on the issue; the election results did not evidence severe racial polarization.[77]

Certified copies of the results of the consolidation referenda held in Port Arthur, Pear Ridge and Lakeview were filed with the Texas Secretary of State on December 1, 1977, and the consolidation was officially consummated.[78] Henceforth, the City of Port Arthur was responsible for governing a population which was, according to 1980 census statistics, increased by 6,008 people including 80 blacks to a total of 60,493 of whom 24,710 or 40.85% were black and

---

[73] P.P.F. ¶ 21 (admitted).

[74] A.J.S. ¶¶ 50-51.

[75] U.S.P.F. ¶¶ 75-76 (admitted).

[76] A.J.S. ¶¶ 52-53.

[77] Exh. 8, 170. According to plaintiff's expert, Dr. Susan McManus, the polarization scores for the special referendum election on consolidation with Pear Ridge and Lakeview were 56.3 and 56.4, respectively. Exh. 170. None of the expert witnesses who testified in this case would consider that level of racial polarization to be severe. *See* note 136 *infra*.

[78] A.J.S. ¶ 56.

3,825 or 6.32% were Hispanic.[79] The areas formerly known as Pear Ridge and Lakeview contributed over 16% of the whites in the enlarged community and less than 1% of the blacks.[80]

4. The 7-0-1 plan

On November 28, 1977, the Port Arthur City Council fulfilled its promise to the Pear Ridge and Lakeview electorate by adopting Ordinances 77-118 and 77-119 which established Pear Ridge and Lakeview Advisory Councils.[81] The City Council also assembled an Advisory Committee for Council Election System for the purpose of proposing changes in the manner of electing council members in view of the expansion of the City.[82] Thirteen local civic groups were selected to appoint two members each to the Election System Advisory Committee. Of the 26 people designated to serve on the Committee, only 7 were black and 2 were Hispanic.

---

[79] *See* note 5, *supra*.

[80] In calculating the percentage of the white population which was added, we assumed that the City's Mexican-Americans were all included in the "white" population and, therefore, subtracted them out of the total population as well as the blacks. We recognize that our assumption is not well-founded, *see* note 5 *supra*, but it is preferable to utilize the most conservative estimate. Two alternative methodologies produce somewhat greater percentages. If we simply use the numbers in the "white" category of the 1980 Census, it appears that Pear Ridge and Lakeview contributed 5,696 whites or 17.15% of the eventual total of 33,222. We might also have subtracted all of the City's minority population including American Indians, Asians, Hispanics, blacks and others from the total population; in that event, we conclude that 4,991 whites or 17.03% were added by the consolidation to make a total of 29,301 whites.

[81] A.J.S. ¶ 55.

[82] A.J.S. ¶¶ 54, 61-2.

The record suggests that the Advisory Committee for Council Election System was racially divided.[83] According to the statement in the Committee minutes by Rev. Ransom Howard and the testimony of other black committee members, the white members generally favored an at-large system while the blacks supported a single-member district plan. Eventually, the majority of the Committee recommended to the City Council that the at-large election system be continued and that a seventh councilmanic position be added to the existing six-member council ("7-0-1" plan). A minority report proposing the adoption of a single-member district plan was submitted to the Council by five of the seven black representatives on the Committee.

Plaintiff argues that the City Charter only permitted the Council to increase the number of seats from six to eight without changing the election system itself.[84] Furthermore, the City claims that the addition of a seventh position was a valid effort to "increase minority representation." [85] These explanations, however, ignore the possibility of amending the Charter by means of a referendum election, and they do not justify the failure to read the minority report at the two public hearings held by the City Council on December 28, 1977, to discuss the Committee's recommendation.[86] Without attempting to answer these two questions, the Port Arthur City Council accepted the 7-0-1 plan recommended by the Council Election System Advisory Committee and enacted Ordinance 78-11 on January 16, 1978.[87] Subsequently, Ordinance 78-15 was adopted in

---

[83] A.J.S. ¶ 63; U.S.P.F. ¶ 94 (admitted); Exh. 53; Green Dep. 18-19; Scott Dep. 18-19.

[84] *See* Exh. 133, Part 20 at 15.

[85] Exh. 53.

[86] A.J.S. ¶¶ 65-66.

[87] A.J.S. ¶ 73.

order to make technical adjustments to certain residency district lines.

5. Annexation of Sabine Pass

Approximately six months after consolidation with Pear Ridge and Lakeview, the City of Port Arthur began to annex the area known as Sabine Pass, a separate unincorporated community located eight miles from the closest point in Port Arthur. In view of the problems encountered with the municipalities east of Port Arthur and the movement developing in Sabine Pass to incorporate, the Port Arthur City Council decided to annex the latter community.[88] The City had apparently planned to annex Sabine Pass about five years in the future for various economic and administrative reasons. Among the advantages cited by Port Arthur were obtaining a deep water port, sharing a common water supply, controlling offshore drilling activity, acquiring an area for industrial growth, and preventing fragmentation of jurisdiction.

By virtue of Ordinances 78-43, 78-47, 79-33, 79-34, and 79-67, Port Arthur's population increased by 501 including 31 blacks and 18 Hispanics according to the 1980 Census.[89] The City's total population advanced to 60,994 of whom 24,741 or 40.56% were black and 3,843 or 6.30% were of Spanish origin. Thus, since 1977, Port Arthur has enveloped within its borders 5,675 additional whites and 111 additional blacks who comprise 17.51% and 0.45% of the total number of individuals of their respective races in the enlarged city.[90]

---

[88] Tr. I, 63-64 (testimony of George Dibrell); Sadler Dep. II, 20-21, II, 45-47.

[89] A.J.S. ¶ 67. *See* note 5 *supra*.

[90] As explained in note 80 *supra*, the number of white citizens can be derived in several ways from the 1980 Census statistics. The figures appearing in the text were once again obtained by

6. The 8-0-1 plan

Not having held councilmanic elections since April 2, 1977, the City made another effort to develop an acceptable election system at the beginning of 1980. Exhausting its Charter authority, Port Arthur City Council enlarged itself so as to include nine members ("8-0-1" plan).[91] Eight members were required to reside in different districts, and each had to obtain a majority of the votes cast by all of the qualified voters in the "new" City. Their two-year terms were staggered so that four council members were chosen one year, and the four others were selected the next year. The mayor continued to be elected at large every other year.

The task of dividing the City into eight districts of nearly equal population was assigned to Lyle Vickers.[92] His purpose and that of the City Council was to draw districts "to the maximum extent possible to elect at least two black candidates to the Council, and with a third candidate being elected as the population continues to shift east . . . by 1984 or 1985." Using 1970 Census VAP data and considering the "electability of [particular] people, either current Councilmen or people off the Council," Vickers proposed the following districts:[93]

---

subtracting all Mexican-American and black individuals from the total population. The first alternative method described in note 80 indicates that 6,163 or 18.29% of the total "whites" in the expanded area reside in the newly acquired regions. According to the second alternative, 5,440 whites, constituting 18.23% of the new total of 29,840, have been absorbed by Port Arthur.

[91] A.J.S. ¶ 76.

[92] Vickers Dep. I, 43-44, 53, 83; II, 6.

[93] Exh. 115. The parties have not presented the Court with an analysis of the 8-0-1 plan based on more recent population data.

District	*Total Population*			*Voting Age Population*		
	Total	Black	% Black	Total	Black	% Black
1	8,289	3,694	44.58%	5,382	2,094	38.91%
2	8,216	10	00.12%	5,879	6	00.10%
3	7,474	844	11.29%	5,223	478	09.15%
4	7,983	1,045	13.09%	5,558	592	10.65%
5	9,065	8,735	96.35%	5,186	4,951	95.46%
6	8,317	5	00.06%	5,952	3	00.05%
7	9,761	8,305	85.05%	5,751	4,707	81.84%
8	7,023	563	08.02%	4,942	319	06.45%

This plan was adopted on January 21, 1980, when the City Council enacted Ordinance 80-02.

7. The 4-4-1 plan

In the early months of 1980, Port Arthurians were unable to agree upon a mutually acceptable election plan for the City Council. The Port Arthur firefighters' union presented an alternative election system in April in an effort to resolve the impasse so that a referendum on a collective bargaining agreement could be held.[94] Intending to "provide for the election of minorities in numbers approximately equal to their number in the population,"[95] the firemen proposed a plan in which six members of a nine-member city council would be elected from single-member districts and the other two members would be elected by at-large vote with the mayor ("2-6-1" plan).[96] To implement this plan, it was necessary to amend the City Charter by means of a referendum election called upon petition of 5% of the number of voters at the last general election.[97] The firefighters therefore launched a petition drive to place the 2-6-1 plan on a special ballot.

---

[94] Avery Dep. 6-10.

[95] *Id.* at 13.

[96] A.J.S. ¶ 79.

[97] A.J.S. ¶ 115.

The members of the City Council and certain white citizens, however, were adamant in their insistence upon the election of all council members by at-large vote.[98] Mayor Sadler, for example, accused the firefighters of "trying to take over the City" and voiced strong opposition to the concept of the 2-6-1 plan.[99] On the other hand, certain black citizens including intervenor-defendants continued to advocate the adoption of a pure single-member district election system.[100]

Consequently, when the Community Relations Service of the United States Department of Justice ("CRS") offered to mediate the settlement of these differences, the interested parties quickly accepted.[101] The City chose a team composed only of whites to represent it, and there is some evidence to suggest that members of the City's team perceived their role as representing the white citizens of Port Arthur.[102] A second team was established to represent the black community.[103] Although the firefighters were origi-

---

[98] P.P.F. ¶ 41 (admitted).

[99] Avery Dep. 33-34; Sadler Dep. I, 84, 86.

[100] P.P.F. ¶ 41 (admitted); Tr. II, 120, 122, 124 (testimony of Walter Mosely); Avery Dep. 19.

[101] A.J.S. ¶ 80; Tr. I, 43 (testimony of George Dibrell); Avery Dep. 39-41.

[102] A.J.S. ¶ 80; Dickinson Dep. I (October 6, 1980), 11.

[103] A.J.S. ¶ 80. According to the trial testimony of Walter Mosely, the original black team reorganized as the "Green team" after Mr. Mosely criticized some of its members, and it excluded Messrs. Mosely and Lewis. Thereupon, those two men convened a public meeting of representatives from various community organizations in order to elect members of the "Elected Black Mediation Team." After some discussion of the possibility of trilateral negotiations, Mr. Robert Greenwald, the CRS mediator, determined that the proceedings should be limited to two teams, the City's team and the group of black citizens known as the "Green team." The

nally invited to participate, they were later excluded because the City refused to negotiate with people who worked for the City; Mayor Sadler asserted that this would be in "the best interest of my general public" and that the firemen were needed to fight fires.[104]

Between April 28 and June 18, 1980, the City's team and the black team met several times.[105] Initially, the white team supported the election of all council members by at-large vote, and the black team favored a single-member district system. No agreement was reached, however, on these plans or several other alternatives. At approximately the same time that the firefighters were presenting to the City Council their petition requesting a referendum election on the 2-6-1 plan, the mediation team representing the black community made a final suggestion that the 2-6-1 plan be adopted. Because that plan involved too few at-large seats, the white team rejected it.[106]

The City's team countered with a proposal described as "the bottom line." [107] It provided for a nine-member council including a mayor who continued to be elected at-large. Four council members would be elected from single-mem-

---

Elected Black Mediation Team continued to participate in the mediation effort as a consultant to the Green team. *See* Exh. 139; Tr. II, 115-17 (testimony of Walter Mosely).

[104] Avery Dep. 39-41; Sadler Dep. I, 84.

[105] A.J.S. ¶ 81; P.P.F. ¶ 42 (admitted). Our knowledge of the discussions at these meetings is somewhat deficient because of our decision to quash the discovery subpoena served upon Mr. Greenwald. *See* Order of November 12, 1980. Other participants in the mediation process, however, have testified extensively on the subject.

[106] P.P.F. ¶ 44 (admitted); Tr. II, 120-21 (testimony of Walter Mosely).

[107] A.J.S. ¶ 82; P.P.F. ¶¶ 44-45 (admitted); Dibrell Dep. 51-52.

ber districts. These same districts would also serve as residency districts for the four remaining members who would be elected on an at-large basis ("4-4-1 plan").

In formulating this plan, Lyle Vickers allegedly sought to minimize population deviations among districts and to develop compact districts.[108] The information available at the time indicated that the population of each district was as follows:[109]

District	*Total Population*		
	Total	Black	% Black
1	15,020	12,651	84.23%
2	15,181	1,895	12.48%
3	14,982	1,027	06.85%
4	16,185	9,711	63.95%

More recently, the 1980 Census disclosed that the four proposed districts contain the following number of inhabitants:[110]

---

[108] P.P.F. ¶ 55 (admitted); Vickers Dep. I, 102.

[109] Exh. 15. Vickers used 1970 Census statistics updated by annual "block statistics" furnished by the R. L. Polk Co. and data from the City's Community Development Department. *See* P.P.F. ¶ 56 (admitted). The only VAP information available then or now was that derived from the 1970 Census:

District	*Total Population*			*Voting Age Population*		
	Total	Black	% Black	Total	Black	% Black
1	19,160	12,945	67.55%	11,786	7,337	62.24%
2	15,307	117	00.80%	10,937	66	00.63%
3	15,208	153	01.00%	10,862	87	00.79%
4	16,453	9,987	60.70%	10,287	5,660	54.98%

See Exh. 114.

[110] Defendant's Request to Take Judicial Notice at 3.

District	*Total Population*		
	Total	Black	% Black
1	14,649	11,846	80.86%
2	15,855	3,141	19.81%
3	16,033	919	05.73%
4	14,457	8,835	61.11%

When the black mediation team decided that the 4-4-1 plan did not provide the minority community representation proportionate to its electoral strength, it rejected the City's final proposal and the negotiations broke down.[111] That night, six of the nine members of the City's mediation team formed a committee known as the Citizens' Committee for a Fair Electoral System to plan a petition drive for the purpose of presenting the voters with the 4-4-1 plan as an alternative to the 2-6-1 plan in the special referendum election.[112] Although City Attorney George Wikoff, City Manager George Dibrell and Lyle Vickers were not involved in the Citizens' Committee,[113] the municipal government offered its resources to the proponents of the 4-4-1 plan. The original of the Committee's petition to put the 4-4-1 plan on the ballot was typed in the City Attorney's Office, the instructions for the person circulating the petitions were typed in the Mayor's office, and the script for the radio ad promoting the 4-4-1 plan was written by the Port Arthur Director of Public Information.[114]

Throughout the campaign, the Citizens' Committee emphasized that adoption of the 4-4-1 plan would "keep our city government in the hands of *all* people."[115] This theme

---

[111] A.J.S. ¶ 81; P.P.F. ¶ 45 (admitted); Tr. II, 119 (testimony of Walter Mosely); Green Dep. 21-24; Scott Dep. 28.

[112] A.J.S. ¶ 82; Dickinson Dep. I, 12.

[113] A.J.S. ¶ 82.

[114] Dickinson Dep. I, 6, 38; Sadler Dep. I, 89-90.

[115] Exh. 41, 55-56.

was continually repeated, for example, in a brochure distributed by the Committee which juxtaposed the virtually all-white members of the Committee and City Council who supported the 4-4-1 plan and "a certain group of the Port Arthur firemen" who favored the 2-6-1 plan along with Walter Mosely and Rev. C. O. Hall, two prominent black leaders.[116] In order to justify the abandonment of the pure at-large system, the author of the brochure first claimed that the 4-4-1 plan was an effort "to meet minority political interests (black and Hispanic) with the general interests of the citizenry in a sound and balanced government" and then reminded the reader that he/she would be entitled to vote for six of the nine council seats.

In the referendum election on the two proposed electoral systems held on August 9, 1980, the 4-4-1 plan was approved by a majority of the voters while the 2-6-1 plan was opposed by a majority of the voters in a separate contest.[117] Whites and blacks generally opposed each other at the polls; almost three-quarters of the white voters favored the 4-4-1 plan, and nearly all black Port Arthurians voted against it.[118]

C. History of Blacks in Port Arthur

The City of Port Arthur has a long history of discrimination against its black citizens.[119] Until the mid-1960's,

---

[116] Exh. 41.

[117] A.J.S. ¶ 83.

[118] Exh. 172; McManus Dep. II (November 23, 1980), 71-73. The actual racial polarization score with respect to the election on the 4-4-1 plan was 66. Although not "extreme," that score reflects a significant degree of racial polarization. *See* note 136 *infra*.

[119] Plaintiff has filed a plea of collateral estoppel against the intervenor-defendants so as to foreclose relitigation of certain issues relating to the history of black Port Arthurians which were previously adjudicated in *Mosely v. Sadler*, 469 F. Supp. 563 (E.D.

black citizens were subject to official discrimination under

Tex. 1979). In that action, four black citizens sued the mayor and other officials of Port Arthur claiming that the existing at-large election system violated the fourteenth and fifteenth amendments to the United States Constitution. Judge Steger made extensive findings of fact concerning racial polarization, black participation in the political process, and municipal responsiveness to black needs in the areas of employment and city services. Arguing that it is "in privity" with the defendants and that the current intervenors were party-plaintiffs in that suit, plaintiff City of Port Arthur now contends that those issues should not be relitigated. Furthermore, plaintiff maintains that the issues in question were fully and fairly litigated and decided adversely to the intervenors.

Neither the intervenor-defendants nor the defendant United States has filed a statement in opposition to plaintiff's plea. Nevertheless, the Court is inclined to deny plaintiff's request for the following reasons. First and foremost, we find that the non-participation of the United States in the previous litigation is fatal to the operation of estoppel in this case. The essence of collateral estoppel by judgment is that some question or fact in dispute has been judicially and finally determined by a court of competent jurisdiction *between the same parties or their privies.* 1B Moore's Federal Practice ¶ 0.441[2] (2d ed. 1980) (emphasis added). *See Harris v. Washington,* 404 U.S. 55, 57 (1971); *Association of Bituminous Contractors, Inc. v. Andrus,* 581 F.2d 853, 860 (D.C. Cir. 1978); *Laughlin v. U.S.,* 474 F.2d 444 (D.C. Cir. 1972), *cert. denied,* 412 U.S. 941, *rehearing denied,* 414 U.S. 882 (1973); *Inmates, D.C. Jail v. Jackson,* 416 F. Supp. 119, 120 (D.D.C. 1976). The requirement of identity of parties is justified by the ancient doctrine that a person cannot be bound by a judgment unless he has had reasonable notice of the claim against him and an opportunity to be heard in opposition to that claim; due process requires no less. *See Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation,* 402 U.S. 313, 330 (1971); 1B Moore's Federal Practice ¶ 0.411[1] (2d ed. 1980).

Plaintiff has not alleged and there is no reason to believe that the four individual plaintiffs in *Mosely v. Sadler* were or are in privity with the United States. In fact, only two of the present intervenor-defendants were parties in the previous litigation. *See*

the so-called Jim Crow laws.[120] Segregation persisted in the

---

Tr. II, 114 (testimony of Walter Mosely). Therefore, as the Supreme Court did in *City of Richmond, Virginia v. United States*, 422 U.S. 370, 373 n.6 (1975), we must decline to apply the doctrine of estoppel. That case involved a situation nearly identical to the instant one. The presence of black intervenors who had lost an earlier constitutional challenge to an annexation did not estop relitigation of the question of discriminatory purpose because of the absence of the United States from the first suit. Other courts have refused to bar the United States from bringing actions under the Voting Rights Act when individual plaintiffs have previously failed. *See, e.g., United States v. East Baton Rouge Parish School Board*, 594 F.2d 56 (5th Cir. 1979); *United States v. State of Texas*, 430 F. Supp. 920 (S.D. Tex. 1977).

The second reason that the Court must deny Port Arthur's plea is that the burden of proof in *Mosely v. Sadler* was precisely the reverse of that which exists in the instant case. Two of the current intervenor-defendants challenged the at-large election system on constitutional grounds in the earlier case, and, consequently, they bore the burden of proof. In the case at bar, the burden falls squarely on the plaintiff City to demonstrate that the proposed voting changes do not have a discriminatory purpose or effect. *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

Finally, we observe that the racial situation in Port Arthur and its environs has been the subject of previous litigation not once but twice in recent times. Prior to the decision in *Mosely v. Sadler*, another three-judge district court concluded that "though all of Texas has to some degree suffered the blight of racial discrimination, the attempts of the black community in Jefferson County to eliminate the vestiges of slavery have been met by particular turbulence, animosity, and recalcitrance." *Graves v. Barnes*, 378 F. Supp. 640, 648 (W.D. Tex. 1974), *remanded on other grounds*, 422 U.S. 935 (1975). Although there is authority that the conclusiveness of a prior judgment is not affected by the fact that it may be incorrect, we feel compelled to review the facts once again in view of the inconsistent results reached by the two Texas courts on quite similar issues.

[120] Sadler Dep. I, 129, 241.

City's schools until 1970, and the issue of desegregation is still the source of considerable racial tension.[121]

The black community has also suffered from residential segregation and the accompanying problems. As mentioned above, Port Arthur's blacks were essentially confined to the area west of Houston Avenue until 1957.[122] Although blacks were then pushed across that boundary by urban renewal developments, the black community remains concentrated in the western portion of the City.[123] In addition, it is undisputed that the areas of Port Arthur which are heavily populated by blacks are most in need of municipal improvements.[124] The disparate treatment of black and white citizens is perhaps underscored by the relocation of the municipal library from the downtown area where it was easily accessible to most minority members closer to the predominantly white New Town/In Town development; the new civic center was also built in the same area.[125]

The City has similarly performed poorly with respect to minority employment.[126] Although blacks constituted 33.5% of the municipal workforce in 1973, almost nine-tenths of these black employees were skilled craftsmen and service maintenance workers. Very few blacks held middle and upper level jobs. In fact, at that time, no black employee earned over $10,000 per year while 36 whites received salaries in excess of that amount. The situation has improved only slightly since 1973. In 1980, blacks comprised 39.9% of the workforce, but 81% of those workers still held

---

[121] Evans Dep. 64; Freeman Dep. 7; Sadler Dep. I, 102; II, 7.

[122] *See* text accompanying notes 12 & 13.

[123] *Id.;* Green Dep. 6.

[124] Exh. 71; Dibrell Dep. 11-17.

[125] Hall Dep. 27.

[126] Exh. 73, 136; Dibrell Dep. 24-26.

crafts and maintenance positions. Salaries of $16,000 per year or more were received by 257 non-blacks, but only 24 blacks were as highly paid.

It is also significant that there has been a disproportionately low number of black appointees to Port Arthur's boards and commissions.[127] In 1977, blacks filled only 31.3% of the available posts despite the fact that the City was nearly 45% black. Two years later, only 24.5% of the appointments were held by blacks. Furthermore, as the intervenor-defendants observed, "a significant number of the politically active black citizens that have appeared throughout this case do not appear on the list, while a few have been tapped for double and triple duty." [128]

Black Port Arthurians have fared even less well with respect to elected positions. Although blacks have been voting in municipal elections at least since 1931,[129] have regularly turned out to vote,[130] and have offered numerous candidates for office;[131] few blacks have actually been elected. Under the at-large system which existed prior to 1954, no blacks were ever elected to the seven-member commission even though they constituted 24.24% of the total population and 23.1% of the VAP in 1950.[132] Despite the institution of the single-member district plan and the increasing size of the black community, only five black men

---

[127] Exh. 135.

[128] Defendant Intervenors' Post-Trial Brief at 17 (filed December 29, 1980).

[129] Sadler Dep. I, 218-19; II, 13. *See also* Evans Dep. 14; Freeman Dep. 14; McManus Dep. II, 46.

[130] Evans Dep. 47-48; McManus Dep. II, 45.

[131] Cotrell Dep. 55, 57; Davidson Dep. 10. Blacks have vied for office in 30 races between 1963 and 1977; 19 different black individuals were involved.

[132] A.J.S. ¶¶ 5-6; Guidry Dep. 6.

were elected to the City Council between 1954 and 1963.[133] Furthermore, there was never more than one black, the representative from District 1, on the six-member council at any given time.

Since 1963 when the 6-0-1 plan was implemented, no black candidate has ever won a councilmanic seat in Port Arthur when confronted by a white.[134] The poor performance of black candidates with white opponents is largely attributable to racially polarized voting. Plaintiff does not dispute the fact that most of the elections following the December, 1974, Coleman incident have been characterized by severe racial polarization,[135] but the Court finds that this situation has existed at least since 1969.[136] Our con-

---

[133] Tr. I, 28 (testimony of George Dibrell); Guidry Dep. 5, 8-9; Sadler Dep. I, 130.

[134] Tr. I, 135 (testimony of George Dibrell); Tr. II, 29 (testimony of Charles Cotrell); McManus Dep. II, 89.

[135] Tr. I, 207-08 (testimony of Joseph Zimmerman); McManus Dep. I, 45, 67-68; II, 46-47.

[136] Several experts testified on the issue of racial polarization. Each witness derived an arithmetical polarization score from black versus white councilmanic election results by identifying the 90% black precincts and the 90% white precincts, determining the percentage of votes cast in the black precincts for a particular candidate, and then subtracting the percentage of votes cast for the same individual in the white precincts. Tr. II, 9 (testimony of Charles Cotrell); Davidson Dep. 12-13; McManus Dep. II, 49. In the twelve black versus white contests which Dr. Charles Cotrell identified from 1969 through 1977, the black candidate never defeated his white opponent and only 9.21% of the voters in the black precincts supported the eventual white victor. Tr. II, 11. Dr. Cotrell considered the 82.6 average polarization score which he deduced from the returns to reflect "striking" polarization because other political scientists have declared racial polarization to exist where the scores were in excess of 50 or 60. Tr. II, 10-12. A similar analysis of Port Arthur councilmanic election returns

clusion is not surprising in view of the long history of hostility between black and white Port Arthurians which has

---

between 1963 and 1977 by Mr. F. Chandler Davidson produced an average racial polarization index of 84. Davidson Dep. 15.

Mr. Davidson did not study the contests in which a white candidate faced another white, but Dr. Cotrell did review the eleven elections of this variety which were held between 1969 and 1977 and discovered that blacks and whites alike voted for the same candidate in similar proportions in eight of the races. This voting behavior of the black population contrasted sharply with that exhibited in the black versus white contests and, therefore, supported Dr. Cotrell's conclusion that race was the polarizing factor in the latter case. Tr. II, 12-13, 64-69.

Testifying on behalf of the City, Dr. Susan McManus challenged the opinionr expressed by Dr. Cotrell and Mr. Davidson. She argued in convincing fashion that their technique of averaging polarization scores for numerous elections is methodologically incorrect because "it ignores trends, . . . individual races, . . . campaign differentials, . . . voting turnout differentials, . . . [and] specific historical events." McManus Dep. II, 4-5. Nevertheless, the validity of the averaging technique in the instant case is clearly demonstrated by an inspection of the polarization scores for the twelve individual black versus white councilmanic elections held between 1971 and 1977. *See* Exh. 170; McManus Dep. II, 71-73. Nine of the twelve scores exceeded 80, and the only score to fall below 75 was the 63.2 index assigned to the 1977 mayoral race. Dr. McManus also reproached Mr. Davidson for combining whites and Hispanics when he selected those precincts which were over 90% "white". McManus Dep. II, 47. Although this criticism may be technically correct, it is rendered insignificant when one recalls that the 90% figure is merely an arbitrary threshold which approached the ideal 100% level. Finally, Dr. McManus charged that Mr. Davidson's method of excluding races in which black candidates did not run was "unaccepted". McManus Dep. II, 41. Dr. Cotrell, however, reached a conclusion very similar to that of Mr. Davidson by means of a technique in which all councilmanic elections were considered. *See* Tr. II, 7-13.

manifested itself in the form of discrimination, white flight, and, more recently, black political activism.

In an independent study of electoral behavior in Port Arthur between 1969 and 1978, Dr. McManus reported that racially polarized voting was only present in the 1975 election for the mayor and Council and the 1977 election for the Council; only these races had polarization indices in excess of 90, the score which Dr. McManus required. McManus Dep. 1, 45-46; II, 50-51. Although the 1977 consolidation referenda had polarization scores of 56, the 1977 mayoral election had a score of 66, the 4-4-1 referenda had a score of 66, and earlier councilmanic elections had even higher scores; Dr. McManus did not consider those elections to have been polarized. McManus Dep. I, 45; II, 46-47, 50, 61-62, 64-65, 73-74, 119. Her analysis of these results was that "racial polarization in council elections is not attributable to the current electoral system, but to a specific incident involving Port Arthur police in 1975" which generated an anti-incumbent animus among black voters. Exh. 170; McManus Dep. I, 65-67; II, 46, 68.

The testimony of Dr. McManus, however, fails to withstand scrutiny. While she insisted on direct examination that any polarization score below 90 was not indicative of significant racially polarized voting, Dr. McManus admitted on cross-examination that she had used a threshold polarization score of 75 to determine "highly significant" polarization in a study relating to the City of Houston. McManus Dep. II, 53-59. According to her own figures, eleven of twelve black versus white contests between 1969 and 1977 evidenced "highly significant" polarization if the threshold is fixed at 75. The low score in the twelfth race, the 1977 mayoral election, can be attributed to Dr. McManus' method of analyzing multi-candidate contests, *see* McManus Dep. II, 68-70, and perhaps the relatively low polarization scores in the so-called issue elections concerning consolidation and the 4-4-1 plan are best explained by the imperfect identification of issues with skin color in the eyes of the electorate. Finally, we are not unaware that other factors such as incumbency affect the outcome of elections, but we cannot agree with plaintiff's broad statement that "incumbency is a far more decisive factor to election than race." Post-Trial Reply Brief of City of Port Arthur at 2 (filed December 31, 1980). In highly polarized black versus white contests, incumbency is only important to white voters and only insofar as the incumbent is white.

Although a black has not defeated a white in a councilmanic election since 1963, a single black, Arthur Guidry, has continuously served on the City Council from that time to the present.[137] Mr. Guidry first ran at large in 1963 as an incumbent carry-over from the single-member district system, and he has only faced black opponents. In recent years, he has won reelection without a majority of the black votes only because he enjoys the support of the City's white community. Finally, with respect to the contests after 1963 which involved only white candidates, we note that the black citizens of Port Arthur have been unable to wield a so-called "swing vote;" the black population has been unable to influence the outcome of the race by rallying behind one of the two white contestants.[138]

D. History of Mexican-Americans in Port Arthur

Originally, the Hispanic population of Port Arthur was concentrated in an area west of Houston Avenue known as "the colonial", but plaintiff contends that it has since dispersed throughout the City.[139] In support of this assertion, the City directs our attention to the 1970 Census which revealed that fifteen of the twenty-one Census tracts comprising Port Arthur each included over 100 Mexican-Americans and that only one tract contained none.[140] Nevertheless, there is persuasive evidence that the Hispanic community may not be evenly distributed today. According to the 1980 Census statistics, Mexican-Americans ac-

---

[137] U.S.P.F. ¶ 97 (admitted); Exh. 8; Tr. II, 13, 29 (testimony of Charles Cotrell).

[138] Tr. II, 64-65 (testimony of Charles Cotrell). Of the eleven elections in which a white candidate faced another white between 1969 and 1977, only two were decided by the black vote. Tr. II, 12-13, 64-69 (testimony of Charles Cotrell).

[139] Flores Dep. 14; Sadler Dep. I, 220; Silva Dep. 24.

[140] Vickers Dep. I, 50.

counted for 17.60% of the inhabitants of tract 52 whereas tract 58 included only one person of Spanish origin. The greatest number of Mexican-Americans apparently live in the area designated as tracts 54-56 and 63-68 which is east of Houston Avenue and west of Groves. Plaintiff curiously admitted as much by circling tract 65 and labelling it "Hispanic concentration" on a map presented to the Attorney General in conjunction with the City's 1979 application for preclearance under section 5 of the Voting Rights Act.[141]

The testimony relating to other aspects of the lives of Port Arthur's Mexican-Americans is somewhat sparse. However, with respect to electoral politics, it appears that they have been afforded the opportunity to participate fully.[142] Yet, few, if any, Hispanic citizens have actually run for office, and no Mexican-American has ever won a position on the Port Arthur City Council.[143] In addition, there is no evidence that the individuals of Spanish origin have voted or will vote as a block. On the issue of at-large versus single-member district electoral systems, for example, there was testimony that most Mexican-Americans in Texas favor the latter, but neither Mr. Flores nor Mr. Silva, two Hispanic residents of the Port Arthur metropolitan area, supported the ward system.[144]

E. Procedural History

The instant litigation was initiated by a letter from the City of Port Arthur received by the Attorney General on January 21, 1978, which requested preclearance under section 5 of the Voting Rights Act for the voting changes occasioned by the consolidation with Pear Ridge and Lake-

---

[141] Exh. 133, Part 23.

[142] Flores Dep. 19; Sadler Dep. I, 219-20.

[143] Flores Dep. 17-18; McManus Dep. I, 86.

[144] Flores Dep. 20, 22; Silva Dep. 30-31, 36.

view and the adoption of the 7-0-1 plan.[145] Within sixty days, the Attorney General interposed a timely objection denying preclearance because the consolidation significantly diluted black voting strength and the 7-0-1 plan did not sufficiently minimize the discriminatory impact of this dilution.[146] "Should the City of Port Arthur undertake to elect members of its city council from fairly-drawn single-member districts," however, the Department of Justice offered to reconsider its objection.

While the application for preclearance was under consideration, Port Arthur attempted to implement the unapproved voting changes. Consequently, four black Port Arthurians, including the intervenor-defendants Walter Mosely and Willie Lewis, obtained an injunction against the City from a three-judge federal court in Texas. *Mosely v. Sadler,* No. B-78-69-CA (E.D. Tex. March 27, 1979). The complaint also challenged the at-large voting plan on fourteenth and fifteenth amendment grounds, but the court found no such violation.[147] *Mosely v. Sadler,* 469 F. Supp. 563 (E.D. Tex. 1979).

As permitted by the Procedures for the Administration of Section 5, 28 C.F.R. 21.51(b), 51.23 and 51.24, the City requested that the Attorney General reconsider his objections to the consolidation and the 7-0-1 plan. In addition, plaintiff submitted the annexation of Sabine Pass and the 8-0-1 plan for preclearance. On March 5, 1980, within thirty days after receipt of the request, the Attorney General declined to withdraw the earlier objections or approve the 8-0-1 plan because Port Arthur had not adopted a

---

[145] A.J.S. ¶ 74.

[146] A.J.S. ¶ 75; Exh. 109.

[147] The decision of the Texas court with respect to the constitutional issue is not relevant to an action brought under the Voting Rights Act. *See City of Dallas v. United States,* C.A. No. 78-1666 (D.D.C. May 5, 1979).

fairly-drawn single-member district plan as recommended.[148] The annexation of Sabine Pass was also disapproved because it merely "exacerbated the dilution of minority voting strength caused by the earlier consolidation." Noting the lengthy delay which had occurred since the first objection had been interposed, the Attorney General ordered the City to notify his office within seven days as to what steps it was willing to take to obtain a withdrawal of the initial objection and the present objection and to obtain preclearance of the ordinances establishing advisory councils. On March 12, 1980, the City of Port Arthur responded by filing the complaint which resulted in the instant suit.

Subsequently, the citizens of Port Arthur attempted to reach an agreement on a new election system through the CRS mediation program. When the negotiations broke down, the City Council was presented with two petitions requesting a special Charter change election on the 2-6-1 and the 4-4-1 plans. Before the referendum was held, however, the United States Department of Justice filed suit before a three-judge federal district court in the Eastern District of Texas seeking an injunction against it. Although the Texas court permitted the City to proceed with the election, it reserved decision on the "legal effectiveness" thereof. *United States of America v. City of Port Arthur*, No. B-80-216-CA (E.D. Tex. July 24, 1980).

On August 9, 1980, the inhabitants of the enlarged City voted in favor of amending the City Charter by substituting the 4-4-1 plan for the existing electoral scheme. The same three judges who had previously denied the injunction against the election then granted the City authority "to declare the results of the referendum election and to certify the City Charter amendment for the *sole* and *limited* purpose of complete submission to the United States District Court for the District of Columbia before which the

---

[148] A.J.S. ¶ 78; Exh. 110.

City's declaratory judgment action is now pending." *United States of America v. City of Port Arthur*, No. B-80-216-CA (E.D. Tex. Sept. 5, 1980). Accordingly, the complaint before us was amended so that it now includes three counts: Count I seeks a declaratory judgment that the 8-0-1 plan, in the context of the consolidation with Pear Ridge and Lakeview and the annexation of Sabine Pass, is without discriminatory purpose and effect; Count II asks for a declaration to the same effect with respect to the 4-4-1 plan; and Count III requests a declaratory judgment that the establishment of advisory councils from Pear Ridge and Lakeview is not a voting change within the scope of section 5 and, if it is, that it did not have an illicit purpose or effect.

II. CONCLUSIONS OF LAW

In 1965, Congress enacted the Voting Rights Act, 42 U.S.C. §§ 1973-1973p (1974) (amended 1975), "to rid the country of racial discrimination in voting." *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966). This purpose was accomplished in part by the remedy set forth in section 5, 42 U.S.C. § 1973c, the suspension of all new voting regulations pending review by federal authorities to determine whether their use would perpetuate voting discrimination. Under section 5, a "State or political subdivision" determined to be within the coverage of the Act after November 1, 1972, may not "enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972," unless such change has been precleared by the Attorney General or unless the State or subdivision obtains a declaratory judgment from a three-judge panel of the United States District Court for the District of Columbia that such change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color" or membership in a protected language minority

group. 42 U.S.C. § 1973c. *See South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

Exercising the jurisdiction vested in this Court by section 5, we initially determine that plaintiff City of Port Arthur is subject to the strictures of that provision. The Voting Rights Act was declared applicable to the State of Texas in 1975, *Briscoe v. Bell*, 432 U.S. 404 (1977); 40 Fed. Reg. 43746 (Sept. 23, 1975), and it is well established that political units within covered jurisdictions must comply with the preclearance requirement of section 5. *City of Rome v. United States*, 100 S. Ct. 1548, 1554, 1556 (1980); *United States v. Board of Commissioners of Sheffield, Alabama*, 435 U.S. 110 (1978).

Furthermore, it is clear that all of the electoral changes for which plaintiff seeks approval come within the purview of the Act. The Supreme Court has repeatedly held that altering boundary lines by annexations or consolidations which enlarge the city's number of eligible voters constitutes the change of a "standard, practice, or procedure with respect to voting." *See, e.g., City of Rome*, 100 S. Ct. at 1554; *City of Richmond v. United States*, 422 U.S. 358, 367-68 (1975); *Perkins v. Matthews*, 400 U.S. 379, 388-90 (1971); *City of Petersburg, Virginia v. United States*, 354 F. Supp. 1021, 1028 n.16 (D.D.C. 1972), *aff'd*, 410 U.S. 462 (1973). Similarly, any modification of voting plans or procedures is by definition subject to preclearance under section 5. *See, e.g., City of Rome*, 100 S. Ct. at 1554; *Beer v. United States*, 425 U.S. 130, 133 (1976); *Georgia v. United States*, 411 U.S. 526, 530-35 (1973); *Perkins v. Matthews*, 400 U.S. at 390-94; *Allen v. Board of Elections*, 393 U.S. 544, 563-71 (1969). Finally, the Court deems the scope of section 5 broad enough to encompass the creation of elected advisory councils from the areas formerly known as Pear Ridge and Lakeview. *See Allen v. Board of Elections*, 393 U.S. at 563-71; *Horry County v. United States*, 449 F. Supp. 990, 995 (D.D.C. 1978).

The burden of proving that the above-mentioned voting changes are non-discriminatory rests squarely on the plaintiff. *City of Rome*, 100 S. Ct. at 1565 n.18; *Georgia v. United States*, 411 U.S. at 539; *South Carolina v. Katzenbach*, 383 U.S. at 335; *Hale County v. United States*, 496 F. Supp. 1206, 1215 (D.D.C. 1980); *City of Petersburg*, 354 F. Supp. at 1027-28. More specifically, plaintiff must demonstrate by a preponderance of the evidence that the proposed "standard, practice or procedure" does not have the purpose of denying or abridging the right to vote on account of race, color, or linguistic affiliation and that it will not have that effect. *City of Rome*, 100 S. Ct. at 1559-60; *City of Petersburg*, 354 F. Supp. at 1027.

Upon consideration of the entire record before us, we conclude that the City of Port Arthur has failed to shoulder this burden. Although plaintiff has established that the principal motives for enlarging its boundaries and creating advisory councils were non-discriminatory, the City has not shown the lack of a discriminatory purpose behind the adoption of either the 4-4-1 or the 8-0-1 plans. Viewing those electoral systems in the context of expanded borders as we must, we also find that plaintiff has failed to prove that their implementation will not have a discriminatory effect. For the same reason, we decline to approve the institution of advisory councils elected by the people of Pear Ridge and Lakeview. Because the evidence of discriminatory purpose is buttressed by that relating to discriminatory effect, we will address those issues in the reverse order.

A. Effect of the Voting Changes

1. In the context of the expanded City, each of the proposed voting plans has a discriminatory effect.

We deal first with the question of whether or not the expansion of Port Arthur in conjunction with the voting plans at issue has the effect of denying or abridging the

right to vote within the meaning of section 5 of the Voting Rights Act. It has often been acknowledged that additions such as the consolidation of Port Arthur with Pear Ridge and Lakeview and the subsequent annexation of Sabine Pass "present unusual considerations and require special judicial treatment." *City of Rome*, 472 F. Supp. 221, 245 (D.D.C. 1979), *aff'd*, 100 S. Ct. 1548 (1980). Virtually any consolidation or annexation will alter the racial composition of the jurisdiction thereby diluting the voting strength of one racial group or another. Were section 5 to prohibit expansion for that reason alone, a city "would be effectively locked into its original boundaries" and unable to respond to the compelling, non-discriminatory requirements of municipal finance, orderly growth, or the provision of city services. *Id.*; *City of Petersburg*, 354 F. Supp. at 1030. As we have recognized in the past, such a result could not have been intended by Congress when it enacted the Voting Rights Act. *City of Rome*, 472 F. Supp. at 245; *City of Petersburg*, 354 F. Supp. at 1030; *accord*, *City of Richmond*, 422 U.S. at 369. Consequently, this Court has adopted an approach endorsed by the Supreme Court whereby a boundary enlargement which "significantly reduces the proportion of voters of a particular race" will only be refused preclearance under the "effect" test if the minority race is "denied the opportunity to obtain 'representation reasonably equivalent to [its] political strength in the enlarged community.'"[149] *City of Rome*, 472 F.

---

[149] Plaintiff urges this Court to substitute the analysis developed in *Beer v. United States*, 425 U.S. 130 (1976), for the inquiry suggested by *City of Petersburg* and its progeny when judging the "effect" of the expansion and related voting changes before us. In *Beer v. United States*, the Supreme Court held that "a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the" prohibited effect. 425 U.S. at 141. This conclusion followed from Justice Stewart's determination that "the purpose of § 5 has always been to insure that no voting-procedure

Supp. at 245, *aff'd*, 100 S. Ct. 1548, *quoting City of Richmond*, 422 U.S. at 370; *accord, United Jewish Organizations*

---

changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Id.* "Congress desired," he reasoned, "to prevent States from 'undo[ing] or defeat[ing] the rights recently won' by Negroes." *Id.* at 140, *quoting* H.R. Rep. No. 91-397, p. 8.

Originally, plaintiff City of Port Arthur proposed that the "'non-retrogression/enhancement' analysis of *Beer* is in fact and law the same standard as the 'reasonable equivalence' test of *Richmond.*" Plaintiff's Brief at 39 (filed December 15, 1980). Arguing that "there is no warrant in law or reason for the application of dramatically different cirteria [sic] to measure compliance with Section 5 depending on whether the voting change in question is an annexation or something else," plaintiff contends that the voting change at issue must be approved if it is found not likely to lead to retrogression in minority voting strength. *Id.* To buttress this position, plaintiff directs our attention to footnote 11 in *Beer v. United States:*

> This Court has not before dealt with the question of what criteria a legislative reapportionment plan must satisfy under § 5. Last Term in *City of Richmond v. United States*, the Court had to decide under what circumstances § 5 would permit a city to annex additional territory when that annexation would have the effect of changing the city's Negro population from a majority to a minority. The Court held that the annexation should be approved under the "effect" aspect of § 5 if the system for electing councilmen would likely produce results that "fairly reflect[ed] the strength of the Negro community as it exists after the annexation." The *City of Richmond* case thus decided when a change with an adverse impact on previous Negro voting power met the "effect" standard of § 5. The present case, by contrast, involves a change with no such adverse impact upon the former voting power of Negroes.

425 U.S. at 139 n.11 (citations omitted).

We reject plaintiff's argument that the simple analysis used in *Beer v. United States* to test the effect of voting procedure changes

of Williamsburgh, Inc. v. Carey, 430 U.S. 144, 160 (1977); *City of Petersburg*, 354 F. Supp. at 1030.

---

can be transferred to complex situations involving consolidations and annexations. As mentioned above, federal courts have recognized the unusual considerations inherent in the enlargement of municipal boundaries and have developed a special method for judging the effect thereof. Before and after the opinion was handed down in *Beer v. United States*, the Supreme Court has consistently conditioned preclearance of territorial expansions upon proof that the additions "significantly altered the racial balance" and that the post-enlargement "political system ensures the black community representation reasonably commensurate with its voting strength in the expanded city." *City of Rome*, 472 F. Supp. at 246, *aff'd*, 100 S. Ct. 1548; *accord, City of Richmond*, 422 U.S. at 368-71.

An examination of the circumstances underlying election procedure changes as opposed to boundary enlargements reveals the wisdom of this special standard. Because the same population with the same racial balance is affected by a procedural change such as reapportionment, it is reasonable to fix the minimum level of representation under the new plan at the level achieved by the same voters under the former plan. When new citizens are added to the municipal population by virtue of a consolidation or an annexation, however, they should not suffer for the failure of the old inhabitants to achieve proportional representation. Implicitly acknowledging the impropriety of such a comparison and the need for flexibility, the Supreme Court has demanded that the minority be afforded representation reasonably equivalent to its political strength in the enlarged community.

We are mindful of Justice Stewart's observation that the "nonretrogression" rule was inconsistent with the result reached in *City of Richmond* because the "chang[e of] the city's Negro population from a majority to a minority" had "an adverse impact on previous Negro voting power," *Beer v. United States*, 425 U.S. at 139 n.11, but we suggest that any boundary enlargement which decreases the proportion of minority voters has a similar "adverse impact" which would warrant the denial of preclearance according to *Beer v. United States*. Rather than banning all such expansions, as it would procedural changes with an "ad-

This analysis was initially applied to the City of Petersburg, Virginia, which was marred by a long history of state-imposed segregation and discrimination which manifested itself in almost total bloc voting by race. *City of Petersburg*, 354 F. Supp. at 1025. Although blacks had won some council seats by majority vote in at-large elections, the City Council had always had a majority of white members who had generally proven unresponsive to the expressed needs and desires of the black community. *Id.* at 1026-27.

---

verse impact," the Supreme Court permits enlarged jurisdictions to cure the discriminatory effect by guaranteeing that the minority race will have the opportunity to obtain representation reasonably commensurate with its voting strength in the expanded community.

Although the City of Port Arthur advanced the above line of reasoning throughout the trial and in its post-trial brief, plaintiff suddenly shifted position in its final submission. Plaintiff then asserted that "this lawsuit presents an expansion plus a legislative reapportionment" and that only the latter should be subjected to the analysis recommended in *Beer v. United States*. Plaintiff's Reply to Defendant's Supplemental Pleading at 6. This eleventh-hour explanation, however, does nothing to advance plaintiff's position and only raises further doubts concerning the legitimacy of the City's initial stance. The cases dealing with annexation clearly establish that the effect of the addition of territory cannot and should not be judged independently of the post-expansion electoral system. *See City of Richmond*, 422 U.S. at 368-72; *City of Rome*, 472 F. Supp. at 245-48; *City of Petersburg*, 354 F. Supp. at 1031. In fact, in *City of Rome*, this Court specifically demanded scrutiny of the "post-annexation political system [to ensure] the black community representation reasonably commensurate with its voting strength in the expanded City." 472 F. Supp. at 246. Although we ultimately determined the effect of Rome's annexations in the context of the electoral rules which carried over from the years preceding the enlargement, we also noted that we would have denied preclearance of the annexations in conjunction with the post-expansion procedural changes had they not been separately declared discriminatory. 472 F. Supp. at 247.

The annexation in question increased the white population by 30% and the number of blacks by only 1%, shifting the latter group from a majority to a minority of the electorate. *Id.* at 1024. We realized that the annexation *per se* was not discriminatory, but we held that:

> the dilution here has occurred as a result of the annexation in the context of at-large elections and bloc-voting by race, and under these circumstances it abridges the right to vote on account of color by impairing the ability of blacks to elect candidates of their choice and to have their ideas on political matters afforded the recognition to which they are entitled on their merits and by virtue of their individual citizenship and their numerical strength in the community.

Id. at 1029. Rather than simply forbidding the annexation, however, we required the City to shift from an at-large to a ward system of electing its councilmen even though "the force of black voting strength will be increased over the results they have been able presently to achieve even with a majority of the voters." *Id.* at 1031. The Supreme Court affirmed without opinion. 410 U.S. 462.

The approach we adopt was next exemplified by *City of Richmond*, 422 U.S. 358. There, after Richmond annexed some adjacent territory which augmented the number of whites by 32% and blacks by just over 1% thus transforming the former black majority into a 42% minority, the City implemented a single-member district plan which promised to produce four black councilmen on a nine-member Council. *Id.* at 363, 366. Despite the diminution in relative black voting strength, the Supreme Court upheld the annexation and the ward system because the electoral system "would afford [blacks] representation reasonably equivalent to their political strength in the enlarged community. . . . Negro power in the new city is not undervalued, and Negroes will not be underrepresented on the Council." *Id.* at 370-371.

Most recently, we addressed the problem of annexations which decrease the minority proportion of the population in *City of Rome*, 472 F. Supp. 221. The circumstances of the black minority were not as grievous as those in *City of Petersburg*. Black voters had not been impeded by direct barriers to voting for many years, and the white elected officials had been quite responsive to the needs of the black community. *Id.* at 224-25. Very few blacks had run for office, however, and no black candidate had ever won an election; although there was no statistical demonstration of racially polarized voting, we concluded that "a substantial measure of racial bloc voting" existed. *Id.* at 225-27. In this context, Rome proceeded to annex areas in which "presently close to 10% of the white voters, and virtually none of the black voters, reside." *Id.* at 247. As the Supreme Court later explained with approval, the district court determined that the City failed to prove "that its electoral system 'fairly reflects the strength of the Negro community as it exists after the annexation[s]' . . . based on the presence of three vote-dilutive factors: the at-large electoral system, the residency requirement for officeholders, and the high degree of racial bloc voting." *City of Rome*, 100 S.Ct. at 1567. Nevertheless, we declined to condition approval of the annexations upon adoption of a single-member district plan as in *City of Petersburg*. Among the reasons for this decision were the less serious circumstances in *City of Rome*, the recognized advantages of a ward system, the unwillingness to intrude in the City's affairs, and the flexible position taken by the Attorney General on the issue. 472 F. Supp. at 247-49.

In analyzing the effect of the expansion of Port Arthur's borders, we first conclude that it significantly altered the racial balance in the City. Rather than viewing the consolidation and the subsequent annexation separately, we will treat them as a single and unified voting change because of their "indivisible cumulative impact on black voting strength and in order to prevent frustration of the Act

through piecemeal changes." *City of Rome*, 472 F. Supp. 247. Furthermore, we rely upon "the most current available population data," the 1980 Census, to make this determination.[150] *City of Rome*, 100 S. Ct. at 1567. We do not, as plaintiff argues, compare pre-expansion population figures based on 1970 Census data with post-expansion figures derived from the 1980 Census,[151] but rather we attempt to respond to the current situation by looking only at the populations which now reside in the City and the added areas.

The 1980 Census reveals that the communities with which Port Arthur joined contain 5,675 whites and 111 blacks while the inhabitants of the enlarged City include 32,410 whites and 24,741 blacks.[152] Thus, over 17% of the whites and virtually none of the blacks live in the new areas.[153] Al-

---

[150] *See* note 5 *supra*. When *City of Rome* was before this Court, we offered the following explanation for using the most recent information:

> This approach comports with the terms of section 5, . . . which requires, in the future tense, that the plaintiff jurisdiction demonstrate that its voting changes "will not" have a discriminatory effect; it comports also with the fact that cities frequently annex relatively unpopulated areas for purposes of future growth and development. Prior judicial opinions further teach that a court in Voting Rights Act cases should respond to the realities of a situation as they exist at the time of decision.

472 F. Supp. at 246-47.

[151] *See* Plaintiff's Brief at 12 (filed December 15, 1980).

[152] *See* text accompanying notes 89 & 90 *supra*.

[153] Although the Supreme Court has expressed a preference for VAP data in section 5 cases, *City of Rome*, 100 S. Ct. at 1567 & n.22; *United Jewish Organizations*, 430 U.S. at 164 & n.23, the only such information which the parties have submitted to this Court relate to the 1970 Census. *See* note 5 *supra*. According to

though the effect of the territorial enlargement here is not as pronounced as it was in *City of Petersburg* or *City of Richmond* where the additional white population was over 30% of the total and the black community was reduced from an electoral majority to a minority, the effect in the instant case is significant nonetheless. In *City of Rome*, we held that the racial balance was substantially altered when only "10% of the white voters, and virtually none of the black voters, reside in the annexed area." 472 F. Supp. at 247. Because the impact of the consolidation with Pear Ridge and Lakeview and the annexation of Sabine Pass is nearly twice as great as that in *City of Rome*, we must inquire further whether blacks have a fair opportunity to obtain representation reasonably proportionate to their post-expansion numerical strength.

The conclusion reached by this Court is that none of the electoral systems proposed by plaintiff Port Arthur affords the black citizens of the City the requisite opportunity to achieve representation commensurate with their voting strength in the enlarged community. Blacks comprise 40.56% of the total post-expansion population, and we estimate that they constitute 35% of the voting-age population.[184] Neither the 4-4-1 plan, the 8-0-1 scheme, nor the

---

that data, Pear Ridge, Lakeview and Sabine Pass contained 5,512 non-blacks and 63 blacks of voting age. Given that the non-black VAP of the enlarged City was 30,115 and the black VAP was 13,096, we observe that the expansion of Port Arthur added over 18% of the voting-age non-blacks and only 0.48% of the voting-age blacks. This result reinforces the conclusion drawn in the text on the basis of the 1980 Census data.

[184] An estimate of the percentage of the VAP which is black can be derived by extrapolation from the 1970 Census data. In 1970, blacks accounted for 40.01% of the total population of old Port Arthur and 34.62% of the VAP. Ten years later, blacks are also approximately 40% of the population (of the enlarged City), so they presumably form close to 35% of the VAP. The Court is

pre-existing 6-0-1 system offers the black community a reasonable possibility of obtaining representation which would reflect political power of that magnitude.

The voting system most recently adopted and the one upon which plaintiff principally relies is the 4-4-1 plan: four members residing in different districts elected at large, four members elected from single-member districts, and the mayor elected at large. Due to a combination of vote-dilutive factors, this plan insufficiently neutralizes the adverse impact on the black community occasioned by the enlargement of the City. First, the black and white communities in Port Arthur have become seriously polarized with respect to voting because of the direct and indirect discrimination suffered by black Port Arthurians for many years and the failure of City officials to be responsive to black interests and needs. Although the history of race relations in Port Arthur may not be quite as tainted as that described in *City of Petersburg*, the instant circumstances do resemble those in Petersburg in that whites have dominated the political process, have been elected by "almost total bloc voting by race," and have then been inattentive to the problems of providing blacks with city services and jobs. Furthermore, the racial situation in Port Arthur is somewhat worse than that described in *City of Rome* where the municipal government was more responsive to the black community and the evidence of racial polarization was less convincing.

In addition, the 4-4-1 plan contributes to the diminution of minority voting strength. As determined in *City of Petersburg* and *City of Rome*, the black population effectively has no opportunity to elect the at-large council mem-

---

cognizant of the dangers involved in such analyses, but it notes that plaintiff and defendant United States have both suggested that we adopt this method. *See* Plaintiff's Brief at 42; Request of Defendant United States of America to Take Judicial Notice at 5.

bers. Where blacks constitute only 40% of the total population and 35% of the VAP, they cannot defeat candidates proffered by their white opponents in a racially polarized atmosphere.[155] Moreover, this situation is exacerbated by the majority vote and residency requirements included in the 4-4-1 system because these features tend to promote head-to-head contests between black and white candidates and undermine the possibility of electing a council member of the minority's choice by single-shot voting.[156] In fact,

---

[155] *See* Tr. II, 25 (testimony of Charles Cotrell); Cotrell Dep. 44-45; Davidson Dep. 9, 114. The Supreme Court has also recognized the inescapable logic of this conclusion:

> Where it occurs, voting for or against a candidate because of his race is an unfortunate practice. But it is not rare; and in any district where it regularly happens, it is unlikely that any candidate will be elected who is a member of the race that is in the minority in that district.

United Jewish Organizations, 430 U.S. 166-67 (1977).

[156] The United States Commission on Civil Rights has reported that:

> There are a number of voting rules which have the effect of frustrating single-shot voting . . . . [I]nstead of having one r ce for four positions, there could be four races, each for only one position. Thus for post no. 1 there might be one black candidate and one white, with the white wining. The situation would be the same for each post, or seat—a black candidate would always face a white in a head-to-head contest and would not be able to win. There would be no opportunity for single-shot voting. A black still might win if there were more than one white candidate for a post, but this possibility would be eliminated if there were also a majority requirement.
>
> [Second,] each council member might be required to live in a separate district but with voting still at large. This—just like numbered posts—separates one contest into a number of individual contests.
>
> [Third,] the terms of council members might be staggered. If each member has a 4-year term and one member is elected

under these conditions, a black candidate has never beaten a white at large in Port Arthur's history, and the only black man to have won a councilmanic position by at-large vote has not been the choice of the black community in recent years. Although theoretically possible, black Port Arthurians have not even wielded a swing vote in at-large races between two or more white contestants. Thus, the black voters of the City essentially have no role in determining the outcome of the five at-large elections for council seats.[157]

With respect to the four remaining single-member posts, there is no dispute that two will be totally outside the sphere of influence exerted by the black minority if the patterm of racially polarized voting persists.[158] Comprising only 19.81% of the total population in District 2 and 5.73% of that in District 3, blacks have no power to affect the outcome of the single-member races in those wards. Similarly, the Court agrees with the unanimous expert testimony that the representative elected by District 1 will be selected by the black community which accounts for 80.86%

---

each year, then the opportunity for single-shot voting will never arise.

U.S. Comm'n on Civil Rights, The Voting Rights Act: Ten Years After, 207-08 (1975). *See also* Tr. II, 16, 18-19 (testimony of Charles Cotrell).

[157] We include the mayor among the council members elected by at-large vote; thus the City Council consists of nine positions under the 4-4-1 and 8-0-1 plans or seven positions under the 6-0-1 plan. Although the additional ceremonial and "political" responsibilities assigned to the mayor do distinguish him from the other council members, we find controlling the fact that the mayor casts an equal vote on all issues before the Council. *See* text accompanying note 20 *supra*. When determining the minority's opportunity to obtain "representation," the mayor must be considered.

[158] Tr. II, 23-25 (testimony of Charles Cotrell); Bowers Dep. 27; Davidson Dep. 8-9; Hofeller Dep. 35-36; McManus Dep. II, 90.

of the population therein.[159] Finally, although there is some evidence that the blacks who make up 61.11% of the population of District 4 will have difficulty controlling the result of the election in that district, we find that there is indeed a reasonable probability that the choice of the black voters will prevail.[160]

---

[159] Tr. II, 23-25 (testimony of Charles Cotrell) (based on 1970 Census data and 1979 estimate); Bowers Dep. 27 (based on 1970 Census data); Davidson Dep. 8-9 (based on 1979 estimate); Hofeller Dep. 35-36 (based on 1980 estimate); McManus Dep. II, 90 (based on 1979 estimate).

[160] Defendant United States contends that the 61.11% majority held by the blacks in District 4 is insufficient to insure them the opportunity to elect a representative there. *See* Post-Trial Brief of Defendant United States of America at 44-45 (filed December 23, 1981); Defendant United States of America's Request to Take Judicial Notice at 3-5. In support of this assertion, defendant cites the testimony of Dr. Charles Cotrell to the effect that District 4 was "getting close . . . to a problematic district" when it was estimated to be 63.5% black. Tr. II, 23. Defendant also refers us to *State of Mississippi v. United States*, 490 F. Supp. 569, 575 (D.D.C. 1979), *aff'd*, 444 U.S. 1050 (1980), for the proposition that "it has been generally conceded that, barring exceptional circumstances such as two white candidates splitting the vote, a district should contain a black population of at least 65 percent or a black VAP of at least 60 percent to provide black voters with an opportunity to elect a candidate of their choice." *See also Donnell v. United States*, C.A. No. 78-0392 (D.D.C. July 31, 1979), *aff'd*, 444 U.S. 1059 (1980).

Although blacks comprise only 61.11% of the total population of District 4 and approximately 55% of the VAP, *see* notes 109 & 154 *supra*, we nevertheless adjudge that number sufficient to provide them with the chance to elect a candidate of their choice. Unlike *State of Mississippi*, we have found that black voter turnout and general political activity nearly approximate that of the white community. *See* text accompanying notes 129-31. Therefore, it is not necessary that blacks attain a 65% over-all majority or a 60% majority of the VAP in order to obtain representation in District 4.

We reach these conclusions concerning the probable impact of the 4-4-1 plan despite arguments to the contrary offered by plaintiff. According to the City, there is a distinct possibility that one or more at-large seats will be subject to the control of the black community. With respect to District 1, for example, Port Arthur observes that a black man, Arthur Guidry, has been continually re-elected at-large since 1963, that a white candidate has never surfaced to challenge him, and that a black will continue to be elected due to a "sense of fairness."[161] The Court, however, is not persuaded. As racial polarization has increased in recent years, Mr. Guidry has not been the choice of the black minority; he has only won re-election because he has the support of the white population. Secondly, although District 1 has never produced a white candidate in the past, the inclusion within that ward of Sabine Pass, a separate, predominantly white community with independent interests, can be expected to result in white candidacies which will prevail in the City's racially polarized atmosphere. Lastly, the subjective judgment of Dr. Susan McManus that the voters of Port Arthur will elect a third black council member out of a "sense of fairness" is not credible where there is racial bloc voting and there are already two black members from single-member Districts 1 and 4.

For similar reasons, plaintiff's contention that a black candidate from District 4 will prevail in an at-large race fares no better. At approximately 36% of the ward's population, the number of whites in this district significantly ex-

---

Moreover, we note that individuals of Hispanic origin comprise 2.7% of the district's population thereby relegating white citizens to a maximum of 36%. Unless we assume that whites, Hispanics, and other minorities vote as a monolithic group, the black inhabitants of District 4 will certainly derive the benefits of their clear majority.

[161] *See* McManus Dep. II, 95-96; Post-Trial Reply Brief of City of Port Arthur at 2-3.

ceeds the number in District 1, and it insures the emergence of a candidate who represents their interests. Without the so-called sympathy vote, this white candidate is then fairly certain to succeed at large when the white majority normally votes for the white candidate.

The third at-large position which plaintiff urges could be won by the minority's candidate is that of the mayor. In support of this proposition, the City cites testimony by A. Z. McElroy, a former black mayoral candidate, and George Dibrell, the City Manager.[162] However, we must discount the statements of both witnesses; Mr. McElroy based his conclusion on the premise that blacks were an electoral majority, and Mr. Dibrell's conclusory opinion was that of an "interested witness" who was a proponent of the 4-4-1 plan and continued to serve as a City official after its enactment. *See City of Richmond*, 422 U.S. at 377; *Hale County v. United States*, 496 F. Supp. at 1217. Once again, we conclude that white victory is inevitable in view of the high degree of racial bloc voting and the existence of a white majority in the City.

A final defense raised by plaintiff in its effort to prove that the 4-4-1 plan is without a discriminatory effect concerns the Hispanic minority. Assuming that the 6.30% of Port Arthur's population which is of Spanish origin is evenly distributed throughout the enlarged City, Dr. McManus testified that a pure single-member district system would render the Mexican-Americans "almost helpless in terms of, (a) electing their own person to [the] Council, and (b) being able to leverage any of the other . . . Council members."[163] On the other hand, if at-large seats are available, Hispanic citizens will supposedly have more opportunity to achieve political representation and might even

---

[162] Tr. I, 79 (testimony of George Dibrell); McElroy Dep. 14-15, 31-34.

[163] McManus Dep. I, 25, 31-33.

gain a council position due to the omnipresent "sense of fairness." In the opinion of Dr. McManus, the 4-4-1 scheme is the best accommodation of the separate black and Hispanic political interests.

Although we recognize that Mexican-Americans are protected under the Voting Rights Act just as other minorities are, we fail to see the merit in plaintiff's position. There is substantial evidence that the residents of Spanish origin are not equally dispersed throughout Port Arthur, and, therefore, it is conceivable that the Mexican-Americans in a single ward might exercise significantly more voting power in a single-member district contest than the city-wide Hispanic population could wield at large. Even if plaintiff's assumption that this group is evenly distributed were correct, the Court rejects the suggestion that the Spanish-speaking minority would be more influential in an at-large race than in a single-member district election; a constant proportion of the population made up of Mexican-Americans should have the same voting power regardless of the size of the electoral unit. Moreover, plaintiff has not sufficiently demonstrated that this voting power is of any consequence. With only 6.30% of the total population and no apparent political cohesion, Port Arthur's Hispanic community is unlikely to have an important impact on any election. To the extent that Port Arthurians of Spanish origin will affect the political process, they may do so with equal ease in a ward system or in an at-large setting.

In sum, the 4-4-1 plan presents the black minority in the City of Port Arthur with the opportunity to elect two candidates of its choice to the nine-member City Council. Where blacks constitute 40.56% of the total population and approximately 35% of the VAP, an election plan which affords them the potential to select only 22.22% of the council members seriously undervalues their voting strength. Though we are aware that "members of a minority group have [no] federal right to be represented in

legislative bodies in proportion to their number in the general population," *Beer v. United States*, 425 U.S. at 136 n.8, *citing Whitcomb v. Chavis*, 403 U.S. 124, 149 (1971), we hold that the 4-4-1 scheme in the context of highly polarized racial bloc voting does not adequately neutralize the adverse impact of the expansion of Port Arthur by providing the black community with the opportunity to obtain representation reasonably equivalent to its voting strength in the enlarged City.

In view of our findings with respect to the 4-4-1 plan, we need only pause for a moment to consider the effect of the 8-0-1 plan. Given the existence of racial bloc voting, the Court concludes, as we did in *City of Rome*, that this at-large electoral system with a residency requirement is inadequate. Judging by the 1970 Census figures, white candidates will in all likelihood emerge from every district except perhaps District 5 where blacks constituted 96.35% of the total population and 95.46% of the VAP. Because of the history of black failures to defeat whites at large and the increasing racial polarization, black Port Arthurians will elect no more than one of nine representatives under the 8-0-1 plan. With one person of the black minority's choice already on the Council, a second is not likely to be forthcoming out of a "sense of fairness." Finally, for the reasons elaborated upon earlier, a pure at-large plan is no more advantageous for the Mexican-American population in the City than a plan encompassing single-member districts.

Having rejected the 4-4-1 and 8-0-1 plans for insufficiently neutralizing the adverse impact on the black minority caused by the enlargement of Port Arthur, we must now consider the effect of the 6-0-1 scheme which presumably carries over to the present from the period preceding the expansion. *See City of Rome*, 472 F. Supp. at 247. The record is devoid of evidence relating to this election plan subsequent to the consolidation and annexation. Neverthe-

less, we find that it cannot withstand our scrutiny because it suffers from each of the three vote-dilutive factors for which we condemn the 8-0-1 system. Thus, plaintiff City of Port Arthur has failed to carry its burden of demonstrating that it has implemented a voting plan which insures the black population an opportunity to obtain representation reasonably commensurate with its voting strength in the enlarged community.

2. The establishment of advisory councils has a discriminatory effect.

When the City Council of Port Arthur officialized the consolidation with Pear Ridge and Lakeview, two supplementary ordinances were enacted which established independent advisory councils for those two areas. Elected by the predominantly white residents of the two communities, the members of these councils were to have direct access to and influence on the decision-making process of the municipal government for a five-year transition period. Because the minority populations in the City do not have the opportunity to elect advisory representatives such as these, we are compelled to declare the Pear Ridge and Lakeview Advisory Councils discriminatory in effect. Plaintiff has failed to present any evidence which would warrant the opposite conclusion.

B. Purpose of the Voting Changes

Under section 5, we need not reach the issue of whether the changes in voting standards, practices or procedures were undertaken with the purpose of denying or abridging the right to vote on account of race, color or language-affiliation if we find that these same actions have a discriminatory effect. Nevertheless, the substantial evidence that plaintiff was motivated to adopt the 8-0-1 and the 4-4-1 plans by an impermissible intent provides an alternative basis for denying preclearance. In fact, even if the

effect of these electoral modifications was entirely legal, the implication of a discriminatory purpose would be sufficient reason for us to prohibit their implementation. *See City of Richmond*, 422 U.S. at 378.

We begin with the rule of law that "an official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute." *Id.* In order to identify this illegal purpose, the court may—indeed must—conduct:

> a sensitive inquiry into such circumstantial and direct evidence of intent as may be available. The impact of the official action—whether it "bears more heavily on one race than another," *Washington v. Davis* [426 U.S.] at 242[, 96 S. Ct. at 2049]—may provide an important starting point. Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face . . . .
>
> The historical background of the decision is one evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes. . . . The specific sequence of events leading up to the challenged decision also may shed some light on the decisionmaker's purposes.

Village of Arlington Heights v. Metropolitan Development Corp., 429 U.S. 252, 266-67 (1977) (citations omitted). *See also Mobile v. Bolden*, 100 S. Ct. 1490 (1980); *Hale County*, 496 F. Supp. at 1218; *City of Rome*, 472 F. Supp. at 243.

Generally, in section 5 suits, plaintiff bears the burden of proving by a preponderance of the evidence that an invidious purpose did not exist. *See Hale County*, 496 F. Supp. at 1218. When dealing with the accretion of land by a state or political subdivision, the Supreme Court has

permitted plaintiffs to escape the consequences of a contemporaneous discriminatory intent if it can be demonstrated that "there are now objectively verifiable, legitimate reasons for the annexation." *City of Richmond*, 422 U.S. at 375.

1. The consolidation of Port Arthur with Pear Ridge and Lakeview and the annexation of Sabine Pass are not infected by a discriminatory purpose.

Initially, the Court must examine the historical background of the consolidation of Port Arthur with Pear Ridge and Lakeview and the subsequent annexation of Sabine Pass. Plaintiff City of Port Arthur would have us believe that this history was unstained by official discriminatory acts and that there were legitimate motives for its attitude toward and participation in the expansion of its borders. The scenario begins with evidence of the City's long-standing interest in growth. Although the numerous efforts to annex or consolidate with some of the surrounding communities in the 1940's and 1950's were not always successful, the City Council and the residents of Port Arthur routinely supported them. Then, in 1963, Port Arthurians turned their attention inward. Blacks and whites alike voted to substitute a new at-large voting scheme, the 6-0-1 plan, for the existing ward system in an attempt to rid the City of corruption which was believed to be associated with the latter plan.

With the arrival of the 1970's came a series of regional problems relating to municipal finance, services, and growth which once again led Port Arthur to ponder the possibility of joining with its neighbors. Because all of the surrounding black areas had already been absorbed, the City was compelled to focus on predominantly white communities. The PAS consulting group strongly recommended this action in 1973 and further counseled that the City would have to engage in an extensive promotional campaign to ensure success. After some additional prodding by resi-

dents of the neighboring towns, the City Council heeded the advice of PAS and consolidation with Pear Ridge and Lakeview was accomplished in 1977. Shortly thereafter, Port Arthur annexed Sabine Pass for many of the same administrative and economic reasons and in order to forestall the fragmentation of jurisdiction which had plagued it for so long on its eastern border. To accommodate the addition of approximately 7,000 new citizens, the City attempted to enlarge the Council by implementing the 7-0-1 plan.

In reviewing the events preceding the expansion of Port Arthur's boundaries, however, the Court cannot overlook certain events which suggest that municipal officials were at least partially motivated by a desire to abridge the electoral rights of the black population. Although the black citizens of the City had long been the objects of discrimination and segregation, the first official action of significance to this inquiry was the redrawing of district lines in 1963 on an east-west axis. As a result, the majority of black citizens remained concentrated in the first district, and the increasing black population east of Houston Avenue was diluted by combining it with the white areas further east. The second suspect action of the City Council was the publication of a series of advertisements in the Port Arthur News warning of the effort "to rally the local black community to gain control of the city government" in the April, 1977, councilmanic elections. Despite plaintiff's attempt to color these ads as admonitions of an "outside takeover," they were obviously intended to alert the white population to the serious political challenge posed by black Port Arthurians.

The circumstances surrounding the initiation of the consolidation drive by municipal officials offer a third bit of incriminating evidence. Although the PAS report recommending consolidation had been in the City Council's possession since 1973 and a few individuals from the neighbor-

ing towns had made inquiries on the subject since 1975, no action was taken by the City until immediately after the white candidates narrowly won the highly polarized elections in April, 1977. In the course of the ensuing consolidation campaign, Mayor Sadler and City Manager Dibrell arranged for the controversial meetings with white representatives of Pear Ridge, Lakeview and Griffing Park. Among the advantages cited in favor of consolidation at those meetings was the so-called "stabilization of the population" which was little more than a euphemism for controlling the increasing proportion of the population comprised by blacks.

Finally, between the effective date of the consolidation and the completion of the Sabine Pass annexation, the City Council revealed its invidious intent through its participation in the modification process which resulted in the 7-0-1 plan. Though the black community accounted for almost 40% of the population, only 27% of the individuals appointed to the Advisory Committee for Council Election System were black. When the racially-divided Committee later submitted two reports to the Council, the legislative body ignored the black minority's report recommending the adoption of a single-member district plan and refused to read it at two public hearings.

Despite these indicia of an original discriminatory purpose, we find that plaintiff has successfully demonstrated the existence of legitimate reasons for the expansion as of the present time. Many of the mutual benefits of consolidation cited in Port Arthur in 1977 serve to justify the merger today. In the financial sphere, Pear Ridge and Lakeview now enjoy a reduction in their tax rate, the absorption by Port Arthur of their contractual debts for water and sewer service, and the City's assumption of their responsibility to make capital improvements to the same services. The City, on the other hand, ensured the automatic receipt of federal revenue-sharing funds for the foreseeable future

by boosting the population level substantially beyond the threshold of 50,000.

Additionally, Port Arthur, Pear Ridge and Lakeview achieved certain economies of scale with respect to several municipal services. Not only did the three communities continue to share water and sewer services, but they have also joined police and fire protection forces. The quality of these combined, expanded services has been improved at little extra cost. Another service, that provided by the Port Arthur public library, remains available to all residents of the enlarged City free of charge. Lastly, we find a legitimate justification for consolidation in the expectation that the City would increase its visibility thereby attracting new businesses and creating new jobs.

Some of the same non-discriminatory incentives warrant Port Arthur's annexation of Sabine Pass. Obviously, the addition of Sabine Pass further guaranteed eligibility for mandatory federal funding and further increased the visibility of the City. Furthermore, Port Arthur prevented the fragmentation of jurisdiction which had plagued it to the east, obtained a deep water port, acquired an area for industrial growth, and gained control of offshore drilling activities.

Because we conclude that plaintiff has convincingly demonstrated the existence of legitimate purposes behind the joinder with Pear Ridge, Lakeview and Sabine Pass, we hold that plaintiff has satisfied the "purpose" test of section 5 with respect to voting changes occasioned by the enlargement of its borders.

2. The establishment of advisory councils from Pear Ridge and Lakeview was accomplished without a discriminatory purpose.

At the same time that the consolidation became effective, the City created Pear Ridge and Lakeview Advisory Councils, but, as mentioned above, little evidence relating to

these councils has been adduced. In their defense, Mayor Sadler offered that they were created to smooth the transition for the two towns from being independent to being an integral part of a larger entity.[184] He added that the councils were only established for a five-year period expiring at the end of 1982. The intervenor-defendants have suggested, however, that the City offered to establish these councils in order to entice the surrounding townships to join their primarily white populations with Port Arthur.[185] Furthermore, they urge that the discriminatory effect which we have found is further evidence of the City's invidious purpose.

After weighing this limited evidence, the Court concludes that the preponderance thereof exhibits the absence of a discriminatory intent. The effort to portray the creation of these councils as mere bribery is nothing more than a conclusory allegation. Despite their unfortunate disparate impact, advisory councils such as these appear to be sensible devices for facilitating major changes such as the fusion of three formerly independent cities. That the councils will only exist for five years convinces us that the purpose of instituting them was only to ease the transition.

3. The 8-0-1 and 4-4-1 plans were adopted for an illicit discriminatory purpose.

Although we find that plaintiff has met its burden of proving that the territorial expansion and the establishment of advisory councils were accomplished without the purpose of denying or abridging the black minority's right to vote, we reach the opposite conclusion with respect to the adoption of the 8-0-1 and the 4-4-1 plans. Particularly when we view the events subsequent to the annexation of Sabine Pass in conjunction with those which preceded it,

---

[184] Sadler Dep. I, 72.

[185] Defendant-Intervenors' Post-Trial Brief at 4.

the vast preponderance of the evidence indicates that the last two voting changes submitted to us for preclearance were enacted with an invidious purpose.

As we have stated, the specter of discrimination was raised by the 1963 redrawing of district lines, and its continued existence was marked by the April, 1977, campaign advertisements. The severely polarized councilmanic election results then sparked a mysteriously sudden push for expansion which significantly diminished black voting strength. Rather than neutralizing the effect of this dilution, City officials devised the 8-0-1 and 4-4-1 plans which guaranteed that blacks would remain underrepresented on the City Council by comparison to their numerical strength in the enlarged community. Because of this invidious motive, we condemn the voting plans.

Even before the annexation of Sabine Pass was completed, the 7-0-1 plan, the first modification of the original 6-0-1 plan, was rejected by the Attorney General who recommended the implementation of a single-member district scheme. Nevertheless, the City Council stubbornly clung to the concept of at-large elections where single-shot voting was impeded by residency and majority vote requirements. Knowing that City politics were seriously polarized by race, the officials responsible for developing the 8-0-1 plan must have realized the improbability of the black population electing more than one candidate of its choice. Even if the 8-0-1 plan produced two black council members as plaintiff allegedly intended, the black minority was invidiously denied equitable representation given that it was thought at the time to comprise 35.11% of the total population and 30.31% of the VAP.

When the Attorney General interposed an objection to the 8-0-1 plan, members of the Port Arthur firefighters' union designed the 2-6-1 plan in an effort to obtain section 5 approval. Despite the double censure of the Attorney General, the City Council opposed the firemen's plan and re-

mained adamant about the election of all council members by at-large vote. The white team representing the City even refused to negotiate with the firefighters perhaps because it wished to dissociate the white firemen from the 2-6-1 plan in order to establish its own scheme as the official white plan. Later, when the black team presented the 2-6-1 plan as a compromise at the mediation table, it was officially rejected because it included too few at-large seats. The white team countered with the 4-4-1 plan, which guaranteed white Port Arthurians overwhelming control of seven of nine councilmanic positions even though 41.20% of all those in the City were estimated to be black. This was the City's "bottom line."

Immediately after the mediation negotiations collapsed, the white team organized a Citizens' Committee to place the 4-4-1 scheme on the referendum ballot as an alternative to the 2-6-1 proposal. The Mayor, the City Manager, and the City demographer did not participate in the Committee's work, but municipal resources were donated nonetheless. Though the 4-4-1 campaign propagandizers refrained from making patently racist remarks, the Committee members continually reminded the voters to "keep our city government in the hands of *all* people" and emphasized the fact that a majority of council members—six of nine—would be voted on by each person. The racially polarized results of the referendum erase any doubts as to the racist motivation driving the proponents of the 4-4-1 plan and those who voted for it.

Plaintiff has attempted to justify its support for these electoral plans by citing legitimate purposes. The 8-0-1 plan, for example, was touted as a means of enhancing representation of the black minority because the enlarged Council had more seats available and because the residency requirement limited the candidate pool. We explained earlier, however, that this expectation had little or no prospect of materializing in an atmosphere characterized by severe

racially polarized voting. Also pretextual was the suggestion that the 8-0-1 scheme would advance the political position of the City's Mexican-American population. We have already shown that the two assumptions underlying this prediction, the even distribution of Hispanics throughout the community and the existence of a sympathy vote, are fallacious. Finally, plaintiff attributed its adherence to the all at-large concept to the municipal Charter's limitation on the power of the Council to alter the electoral system. Yet, within eight months, the Charter was amended so as to permit a new method of electing council members.

The justifications which Port Arthur has offered with respect to the 4-4-1 plan are similarly specious.[166] Initially, we note that it is quite tenuous for plaintiff to suggest that an association which the City's residents made between the ward system and corruption in the 1950's still governs attitudes toward electoral plans in 1981. Hence, we proceed to the consideration of plaintiff's second and more important contention that the "purpose of the 4-4-1 plan was to enhance minority voting strength, while preserving the legitimate benefits of the at-large system." We find, however, that any intention to increase the amount of representation that the black community could obtain was overriden by the desire of white Port Arthurians to maintain undisputed control of the municipal government. Furthermore, as we have demonstrated, plaintiff would have more successfully prevented the dilution of the Hispanic vote by creating more single-member district seats.

Lastly, although we recognize that at-large elections often produce representatives who are "more responsive to, and characteristic of, the interests of the entire city," *City of Petersburg*, 354 F. Supp. at 1027, such is not the situation in the instant case. The council members who have been elected at large in the past have proven far more responsive to, and characteristic of, the interests of their

---

[166] *See* Plaintiff's Brief at 26-27.

white constituency than to those of the black minority. As long as the whites remain in the majority and racial bloc voting continues to be prevalent, City officials may be elected at large by their white supporters alone, and they will have no incentive to address the problems of a significant segment of the City of Port Arthur, the black community.

III. CONCLUSION

For the foregoing reasons, we deny plaintiff City of Port Arthur's requests for declaratory judgments in Counts I, II and III as to Ordinance No. 80-02 establishing the 8-0-1 plan, Ordinance No. 80-70 declaring the results of the referendum election at which the 4-4-1 plan was adopted, and Ordinance Nos. 77-118 and 77-119 creating advisory councils from the former municipalities of Pear Ridge and Lakeview. We so decide because plaintiff has failed to demonstrate that the implementation of these three voting changes can be accomplished without the effect of denying or abridging the right to vote on account of race, color or language-affiliation. In addition, preclearance of the 8-0-1 plan and the 4-4-1 plan is denied because the preponderance of the evidence reveals that the development of these electoral systems was infected by a discriminatory purpose.

With respect to the consolidation with Pear Ridge and Lakeview and the annexation of Sabine Pass, we find that plaintiff acted without an illegal invidious purpose. The expansion of the City significantly diluted the voting power of the black minority, however, and Port Arthur has failed to show that any of the electoral systems which it has adopted assure the minority population an opportunity to elect representation reasonably equivalent to its electoral strength in the enlarged community. Therefore, we withhold approval of the territorial expansion until plaintiff has devised a new voting plan which satisfies the concerns expressed in our opinion.

In *City of Petersburg*, we conditioned preclearance of the annexation in question upon the adoption of a fairly-drawn single-member district plan. Although the Attorney General has suggested the same solution throughout this litigation, we hesitate to issue such an order. Our reluctance stems from our desire to minimize the intrusion of this federal court into the affairs of the City and from the indication in *Beer v. United States* that we are without the authority to affect the at-large rule directly. *See City of Rome*, 472 F. Supp. at 248. Instead, we will permit the City to develop an electoral system of its own design. In view of the extraordinary delay that has occurred since April, 1977, when councilmanic elections were last held in Port Arthur, however, we must require that plaintiff present this Court with an acceptable proposal within fifteen (15) days. We retain jurisdiction to insure that our will is carried out as expeditiously as possible.

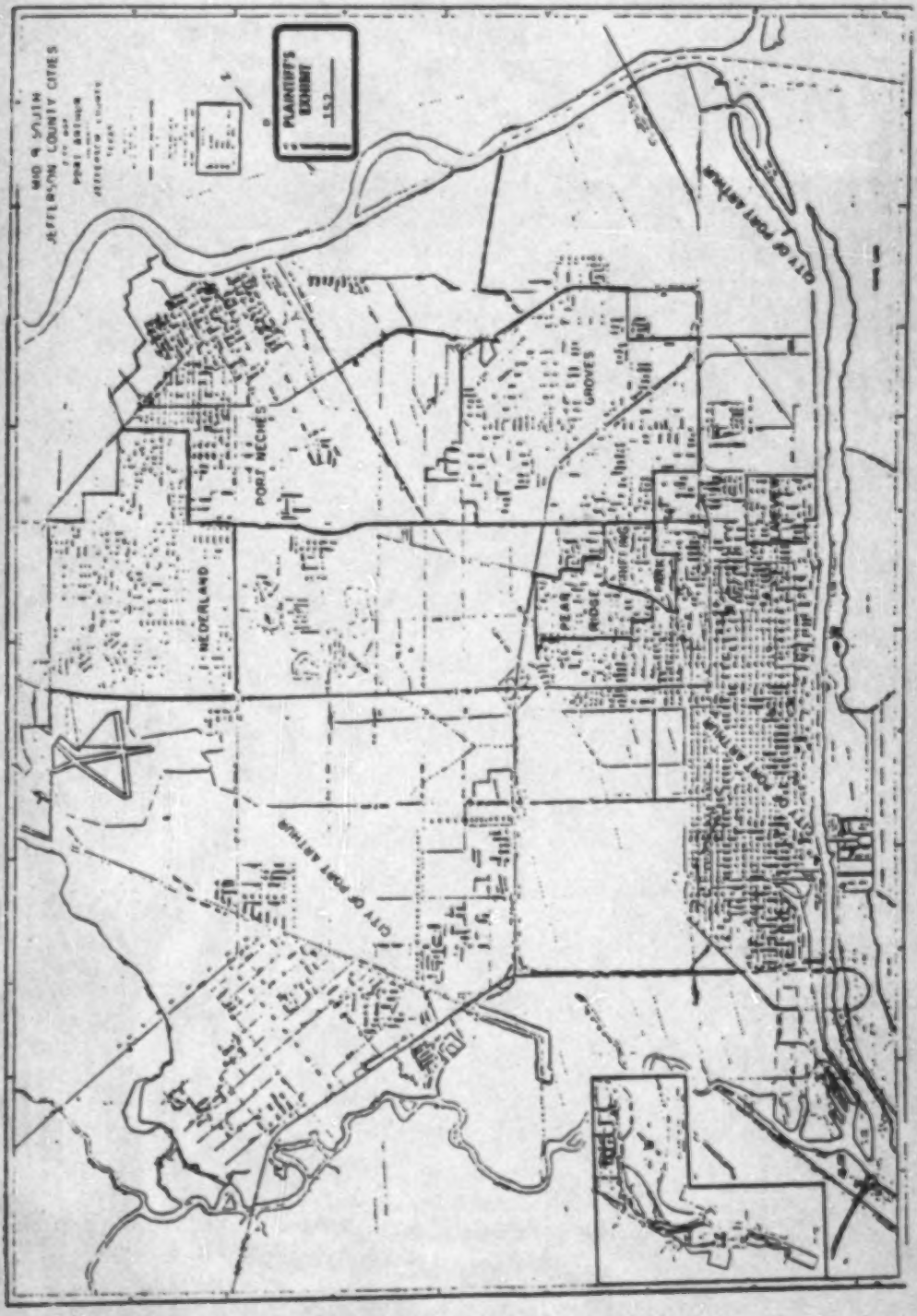
An order and judgment in accordance with the foregoing shall be issued of even date herewith.

/s/ J. Skelly Wright
J. Skelly Wright
United States Circuit Judge

/s/ John Lewis Smith, Jr.
John Lewis Smith, Jr.
United States District Judge

/s/ Charles R. Richey
Charles R. Richey
United States District Judge

APPENDIX A


PLAINTIFF'S EXHIBIT
152
MID & SOUTH JEFFERSON COUNTY CITIES
CITY OF PORT ARTHUR
PORT NECHES
GROVES
NEDERLAND
PEARL RIDGE PARK
CITY OF PORT ARTHUR
CITY OF PORT ARTHUR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-0648

CITY OF PORT ARTHUR, TEXAS, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *et al.*, *Defendants*.

ORDER

Filed June 12, 1981

In accordance with the memorandum opinion issued of even date herewith, it is, by the Court, this 12th day of June, 1981,

ORDERED, that plaintiff City of Port Arthur's request in Count I for a declaratory judgment that Ordinance No. 80-02 establishing the 8-0-1 plan is without discriminatory purpose or effect be, and the same hereby is, denied; and it is

FURTHER ORDERED, that plaintiff's request in Count II for a declaratory judgment that Ordinance No. 80-70 declaring the referendum vote in favor of the 4-4-1 plan is without discriminatory purpose or effect be, and the same hereby is, denied; and it is

FURTHER ORDERED, that plaintiff's request in Count III for a declaratory judgment that Ordinance Nos. 77-118 and 77-119 creating the Pear Ridge and Lakeview Advisory Councils are not subject to the preclearance requirement of section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, be, and the same hereby is, denied; and it is

FURTHER ORDERED, that plaintiff's request in Count III for a declaratory judgment that Ordinances 77-118 and 77-119 creating the Pear Ridge and Lakeview Advisory

Councils are without discriminatory purpose or effect be, and the same hereby is, denied; and it is

FURTHER ORDERED, that the consolidation with Pear Ridge and Lakeview and the subsequent annexation of Sabine Pass be, and the same hereby are, approved on the condition that plaintiff adopt a new electoral system that satisfies the concerns expressed in the accompanying memorandum opinion; and it is

FURTHER ORDERED, that plaintiff must submit to the Court within fifteen (15) days of the date of this Order a written proposal detailing the steps that will be taken to adopt a new electoral system.

/s/ J. SKELLY WRIGHT
J. Skelly Wright
United States Circuit Judge

/s/ JOHN LEWIS SMITH, JR.
John Lewis Smith, Jr.
United States District Judge

/s/ CHARLES R. RICHEY
Charles R. Richey
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-0648

CITY OF PORT ARTHUR, TEXAS, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *Defendant*,
ABRAHAM DOUGLAS, et al., *Defendants-Intervenors*.

JOINT SUBMISSION OF THE CITY OF PORT ARTHUR AND THE UNITED STATES

The City of Port Arthur, by signature of its counsel below, hereby amends its proposed election plan contained in its Report to the Court filed on June 29, 1981. The two at-large council positions designated as positions seven (7) and eight (8) will be replaced by residency districts seven (7) and eight (8). The boundaries of these residency districts will be identical to those of single-member districts five (5) and six (6).

The United States, pursuant to the Court's order of June 30, 1981, views the city's proposed plan as substantially complying with the requirements set out by this Court in the memorandum opinion of June 12, 1981. The United States agrees that the plan will allow blacks a reasonable opportunity to elect representatives of their choice in three of the six single-member districts (Districts 1, 4 and 5). This opportunity for the black community to elect candidates of its choice to 33% of the council positions compares favorably with the Court's determination that blacks constitute 40.56% of the total population and approximately 35% of the voting age population in the post-annexation City of Port Arthur. Thus, the single-member districts in the city's plan would appear to provide the minority community with a fair opportunity to obtain

"representation reasonably equivalent to their political strength in the enlarged community." *City of Richmond* v. *United States*, 422 U.S. 358, 370 (1975).

The one possible area for concern in the city's plan, in the United States' view, is that the plan continues to utilize the at-large concept for the election of two council-members plus the mayor. Since this Court has found, in examining the previous election plans, that "the black population effectively has no opportunity to elect at-large council members"[1] (Slip Op. at 45), the at-large features of this plan were subjected to close scrutiny prior to the filing of these comments. While the question is a close one, in the view of the United States the limited use of at-large seats in the proposed plan does not require the denial of the plan's preclearance. As noted previously the plan does allow the minority community an opportunity to obtain representation reasonably equivalent to their political strength in the enlarged city, and even if the city determined to elect eight council members (all except the mayor) from single-member districts it does not appear that minority representation would increase appreciably.[2] Thus, in the context of the six single-member districts, the at-large features of the plan do not have the same discriminatory impact as the at-large featuers of the city's earlier plans.

It should also be noted, however, that the application of a majority vote requirement to the at-large seats will

---

[1] The Court also found that the effect of the at-large seats "is exacerbated by the majority vote and residency requirement . . . [which] undermine the possibility of electing a councilmember of the minority's choice by singleshot voting," (Slip Op. at 45).

[2] If a fairly drawn plan providing for eight single-member districts were devised it appears likely that the minority community would have a reasonable chance of electing representatives in three of the districts; and the minority population in a fourth district may be sufficiently high to exert a "swing vote" influence.

make it more difficult, given the existing patterns of racial bloc voting, for the minority community to influence the selection of persons to fill those seats. Minority influence on those positions would be increased if the two at-large seats (excluding the mayor) were run on a plurality win system. The city has determined not to incorporate the plurality win provision into the at-large seats. The United States, however, does not believe that the decision rises to a le el of significance which would justify denying Section 5 preclearance.

The United States also believes that the amendment to the plan which the City makes by this joint submission is a positive one. The residency district on the west side of town is approximately 70% black in total population and the addition of the residency requirement will thus assure that one of the at-large representatives will reside in, and hopefully represent the interest of, the portion of the city where a sizable majority of the black population resides.

For the above reasons, the United States believes that the City's proposed plan, as amended, meets the requirements imposed by the Court in the June 12, 1981 opinion and that the plan should receive the necessary Section 5 preclearance.

Respectfully submitted,

For the Plaintiff City of Port Arthur:

James D. Welch

For the Defendant United States of America:

Robert S. Berman

Filed July 8, 1981

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action NO. 80-0648

CITY OF PORT ARTHUR, TEXAS, *Plaintiff*

vs.

UNITED STATES OF AMERICA, et al., *Defendants*

INTERVENORS' RESPONSE TO PROPOSED PLAN

Intervenors offer the following response to the proposed 4-2-3 election plan, as amended to include residency districts for two of the three at large positions.

The new plan proposed by the City substantially insures that the black community will be able to elect three out of nine persons sitting on the Port Arthur City Council. The post annexation black population is 40.5%, and the Court has projected that the voting age population is approximately 35%. The City, apparently a recent convert to proportional representation, maintains that an electoral plan which affords proportional representation to minorities based upon their percentage of the voting age population requires no further inquiry under the Voting Rights Act. The response of the Department of Justice suggests that they would agree with this analysis. Certainly Intervenors consider the new plan a substantial improvement over the City's previous efforts. However, there likewise can be no dispute, given the Court's findings, that the three at-large positions, when coupled with majority/run off requirements, are totally inaccessible to the black community. Therefore, while the plan does approach affording blacks representation reasonably equivalent to their voting strength in the at-large community, it does not appear to "neutralize to the extent possible" the adverse affect of the expansions upon the political participation of black

voters. Substituting a plurality requirement for three or even two of the at-large positions in the plan would allow the City to exercise all legitimate political and governmental perogatives while affording the black population an opportunity to influence the election of the three at-large council people. Further, Intervenors do not agree with the analysis of the Justice Department that a single member district plan could not be drawn that would afford more than three seats to the black community. These problems, coupled with the long range potential of this plan to "freeze" minority participation at a level which would not be substantially affected even with an increasing black population lead Intervenors MOSLEY and LEWIS to object to the plan.

Intervenors DOUGLAS and JENKINS, share the reservations outlined above. However, in light of the Justice Department's acquiescense in the proposed plan and the lengthy delay in the holding of elections in Port Arthur occasioned by the City's resistance to all efforts to obtain fair representation for minority voters in Port Arthur, Intervenors are prepared to accept this plan as a necessary compromise in order to insure that a new City Council can be elected without further delay.

Respectfully submitted,

LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW
733 15th Street, N.W.
Washington, D.C. 20005
(202) 628-6700

BY: /s/ NORMAN CHACKIN (EKJ)
Norman Chackin

EAST TEXAS LEGAL SERVICES, INC.

BY: /s/ ELIZABETH K. JULIAN
Elizabeth K. Julian
Michael M. Daniel
Attorneys at Law
8204 Elmbrook, Suite 200
Dallas, TX. 75247
(214) 638-4276

Elizabeth C. Petit
P.O. Box 2552
Beaumont, TX. 77704

Don Floyd, Esq.
1015 East Gulfway Drive
Port Arthur, TX. 77604
Attorney for Intervenors,
MOSLEY and LEWIS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-0648

CITY OF PORT ARTHUR, TEXAS, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *et al.*, *Defendants*.

ORDER

Filed July 14, 1981

This matter is before the Court upon the joint submission of the City of Port Arthur and the United States. Pursuant to the Opinion of this Court issued on June 12, 1981, those two parties have presented for our approval a "4-2-3" councilmanic election plan which involves six single-member seats and three at-large seats. Four representatives will be elected from the four single-member districts, Districts 1 through 4, into which the City is divided. Then, one council member will be chosen by District 5 which is a combination of Districts 1 and 4 and another by District 6 which is a combination of Districts 2 and 3. Finally, three individuals will be elected at-large; two must reside in Districts 5 and 6 respectively, and the third place which will be filled by the mayor has no residency requirement. Under this plan, all of these races will be conducted on the majority vote principle.

After considering the joint submission, intervenor-defendants' response thereto, and the oral argument of all counsel; it appears to the Court that the proposed plan insufficiently neutralizes the adverse impact upon minority voting strength which resulted from the expansion of Port Arthur's borders. If the 4-2-3 plan were modified, however, so as to provide for the election of the two non-mayoral, at-large representatives by plurality vote, we would con-

sider the defect remedied and offer our approval. The Voting Rights Act of 1965, 42 U.S.C. § 1973c (Supp. 1974-1980), requires no less.

Accordingly, it is, by the Court, this 13th day of July, 1981,

ORDERED that the 4-2-3 plan proffered by plaintiff City of Port Arthur and defendant United States be, and the same hereby is, approved on the condition that the two non-mayoral, at-large representatives be elected by plurality vote; and it is

FURTHER ORDERED that the charter change election and the special councilmanic election planned for August and September, 1981, shall proceed as scheduled; and it is

FURTHER ORDERED that this Court retains jurisdiction in order to insure that our Orders are carried out as expeditiously as possible.

/s/ J. SKELLY WRIGHT
J. Skelly Wright
United States Circuit Judge

/s/ CHARLES R. RICHEY
Charles R. Richey
United States District Judge

I dissent from the contents of this Order for the reasons stated below.

/s/ JOHN LEWIS SMITH, JR.
John Lewis Smith, Jr.
United States District Judge

I dissent on the basis of the Court's opinion of June 12, 1981, and the joint submission of the City of Port Arthur and the United States. I agree with the position of the United States that the City's proposed plan, as amended, meets the requirements previously imposed by this Court. The plan should be approved without condition.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 80-0648

CITY OF PORT ARTHUR, TEXAS, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *et al.*, *Defendants*.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Filed July 21, 1981

Notice is hereby given that the City of Port Arthur, Texas, the plaintiff above-named, hereby appeals to the Supreme Court of the United States from the final order, entered in this action on July 14, 1981, rejecting plaintiff's 4-2-3 councilmanic election plan. The election plan was submitted to the Court for preclearance under Section 5 of the Voting Rights Act of 1965.

This appeal is taken pursuant to 42 U.S.C. § 1973c (Supp. 1974-1980).

James Douglas Welch
Counsel for the City of
Port Arthur
Wald, Harkrader & Ross
1300 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 828-1200

VOTING RIGHTS ACT OF 1965. 42 U.S.C. § 1973c

§ 1973c. Alteration of voting qualifications and procedures: action by state or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court, appeal to Supreme Court

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, pre-

requisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

Defendant's Exhibit 8

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 2877 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

P.O. No. 922

ORDINANCE NO. 2877

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Tuesday the 2nd Day of April, A. D., 1963, for the Purpose of Electing a Mayor and Six Councilmen; Providing for the Issuance of a Call for a Second Election (Runoff Election); and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Tuesday, the 2nd day of April, A. D., 1963, in the sixteen (16) Precincts in the six (6) Districts into which the City of Port Arthur is divided for voting purposes; and,

Whereas, said election was held for the purpose of allowing the qualified voters to elect a Mayor from the City at large and one (1) City Councilman from each of the said six (6) Districts into which the City of Port Arthur is divided; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said Election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

MAYOR

Precincts:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	16	17	Abs.	Total
Elton L. Meyer	14	10	21	37	4	10	2	8	3	1	6	1	0	0	13	11	3	144
Fo die Stewart	13	8	18	20	12	10	26	28	26	21	22	20	15	2	4	12	3	260
R. B. McCollum	15	17	36	47	17	28	52	77	69	77	70	79	36	14	10	44	13	701
Lloyd Hayes	174	143	405	451	182	246	332	445	756	834	895	759	405	168	200	557	126	7078
Harvie Parker	42	35	29	48	40	111	82	132	95	144	176	238	81	11	27	149	28	1468
John C. Burget	3	3	8	14	0	10	6	10	4	7	20	7	14	2	5	8	1	122

COUNCILMEN

Precincts:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	16	17	Abs.	Total
DISTRICT 1																		
Willie Hollier*	60	35	37	56	65	18	127	194	211	288	321	304	165	40	15	247	51	2234
John Syers, Sr.*	59	63	193	257	46	93	124	152	217	216	274	280	107	62	77	139	43	2402
Arthur J. Guidry*	108	92	281	296	100	167	180	268	435	469	473	422	225	82	161	172	70	4001

Precincts:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	16	17	Abs.	Total
DISTRICT 2																		
W. B. (Bill) Peake	32	15	44	65	23	54	35	77	32	93	95	143	57	3	20	61	13	862
Johnnie C. Stewart	21	13	22	40	12	32	47	45	59	52	95	67	31	6	10	64	7	623
Bob Wyde	103	110	253	255	111	163	260	289	621	657	673	323	271	144	156	313	104	5011
Herman T. Schneider, Jr.	24	15	34	57	23	43	40	63	54	82	84	116	60	10	17	81	20	823
Ed Linn, Sr.	45	29	53	39	67	88	104	184	163	188	210	236	118	27	23	159	27	1790

Precincts:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	16	17	Abs.	Total
DISTRICT 3																		
Ernest E. Fletcher	38	21	49	36	31	28	36	61	43	109	96	93	38	13	22	84	16	814
J. W. Pace	23	21	52	44	33	50	64	94	105	147	155	127	95	12	27	134	28	1211
John W. Knowles	50	48	150	248	29	90	78	106	69	52	113	70	55	12	73	68	18	1329
L. F. (Nick) Nicholson	28	35	65	46	33	61	86	175	205	206	278	263	84	43	32	133	33	1806
Leo Hebert	80	39	61	55	96	120	204	216	491	515	501	511	256	102	37	233	73	3590

Precincts:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	16	17	Abs.	Total
DISTRICT 4																		
C. Larry Fontana	107	79	271	305	70	122	120	134	280	288	338	285	204	50	123	176	38	2990
William H. Hall	37	29	38	48	66	72	138	156	268	379	315	430	144	36	23	196	60	2435
Casey Toepoel	15	18	16	19	10	30	11	24	29	32	42	36	12	8	8	5	4	319
Ernest C. Askew	28	17	42	44	36	72	103	221	232	197	261	186	92	39	33	156	48	1807
Sam C. Dio, Sr.	18	12	12	14	14	29	26	51	29	36	54	29	21	3	9	49	7	413
Barney Frazier	12	12	13	29	24	35	69	70	66	102	133	121	56	49	7	69	13	880

Precincts:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	16	17	Abs.	Total
DISTRICT 5																		
Virgil L. Bryan	45	27	36	62	49	71	89	81	199	251	250	287	140	41	23	86	37	1774
Robert A. Hernandez	53	59	100	105	44	72	67	96	75	83	121	104	58	9	46	74	14	1180
John D. Rushing	40	34	67	66	51	41	75	186	105	137	145	165	51	19	36	92	31	1341
Gordy Moss	27	30	68	77	24	113	38	69	48	57	74	70	68	9	32	101	11	916
Bernis W. Sadler	42	28	85	112	60	80	195	231	466	489	549	442	215	107	59	291	76	3527

Precincts:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	16	17	Abs.	Total
DISTRICT 6																		
Witney Hollier	22	25	32	59	41	59	29	70	57	73	81	100	63	1	16	121	5	854
Austin Newsome, Jr.	15	17	28	31	31	57	67	97	106	127	86	194	69	12	26	135	23	1171
Wesley M. Dugan, Jr.	41	34	81	73	45	51	109	169	301	286	391	243	113	52	51	51	63	2154
Frank D. Philyaw	31	25	52	50	26	56	53	69	94	129	165	164	64	11	46	294	22	1351
Harry Vaughn	39	26	63	79	37	51	115	114	243	266	224	222	110	99	35	28	34	1785
Asa Trahan, Jr.	45	34	86	100	40	73	75	108	79	108	199	111	87	20	31	82	14	1293
R. D. Spikes	8	5	11	17	3	11	8	21	9	20	18	25	11	1	1	2	3	174

Section 2. The City Council has determined that said Election was duly called, ordered and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the election of Lloyd Hayes to serve as Mayor and Bob Wyde, to serve as City Councilman pursuant to the Charter. Premises considered, the aforementioned persons are hereby declared to be elected as Mayor and City Councilman, representing District 2, respectively.

Section 3. (a). It has been determined that in Districts 1, 3, 4, 5, and 6, there were more than two candidates, and none of them received a majority of all votes cast in said Districts; and, further, that Arthur Guidry and JOhn Syers were the two candidates in District 1 receiving the highest number of votes; that Leo Hebert, Sr. and L. F. Nicholson were the two candidates in District 3 receiving the highest number of votes; that C. Larry Fon-

tana and William Hall were the two candidates in District 4 receiving the highest number of votes; that B. W. Sadler and Virgil L. Bryan were the two candidates in District 5 receiving the highest number of votes; that Wesley M. Dugan, Jr. and Harry Vaughan were the two candidates in District 6 receiving the highest number of votes. It is therefore necessary for the Mayor to call a second election pursuant to the provisions of Article III, Section 8 of the City's Charter; and the Mayor of the City of Port Arthur is hereby authorized and directed to issue a Call for said second election (Runoff Election) to be held on April 23rd, 1963, for five (5) Councilmen in Districts Numbered 1, 3, 4, 5, and 6, said Call to be issued by the Mayor on the 4th day of April, 1963.

The present Mayor and Councilmen shall continue in office until the returns of the Second (Runoff) Election ordered hereby, have been duly canvassed and the Mayor and all Councilmen chosen by the election held April 2, 1963, and the second election shall have duly qualified.

Section 4. One voting place shall be provided (as shown in "Exhibit A") within each of the Precincts into which the City is divided for voting purposes; and, said Election shall be held therein by the Election Officers who are hereby appointed and listed by name in "Exhibit A" which is attached hereto and made a part hereof.

Section 5. The provisions of Ordinance No. 2868, where applicable shall govern the holding of said Second Election; provided that red colored indelible pencils are hereby prescribed for use in checking off voters' names.

Section 6. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED AND APPROVED this 3rd day of April, A. D., 1963, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor McCollum Councilmen Newsome, Dugan, Askew, and Parker; NOES: None.

/s/ R. B. McCOLLUM
R. B. McCollum, Mayor

ATTEST:

/s/ ERNEST W. MEYER
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM AND LEGALITY:

/s/ CARY YOUNG
Cary Young, City Attorney

APPROVED FOR ADMINISTRATION:

/s/ GEORGE E. DIBRELL
George E. Dibrell, City Manager

Enclosure "A"

Precinct 3-58	**West Side Library**
Presiding Judge	Van Buckner
Assistant Judge	Mrs. Rebecca T. Martin
Clerk	Mrs. Eva Lee
Clerk	Mrs. Theresa S. Bradford
Clerk	Mrs. Geraldine Brown
Precinct 4-59	**Grannis Avenue Fire Station**
Presiding Judge	A. P. Foley
Assistant Judge	H. E. Gabriel
Clerk	Mrs. Mildred Boswell
Clerk	Miss Vernice Rae Miller
Clerk	Mrs. Elsie Z. Frilot
Precinct 17-33 & 35	**Port Acres Fire Station**
Presiding Judge	Chester G. Hutchinson
Assistant Judge	Mrs. L. E. Grand
Clerk	Mrs. H. L. Baggs
Clerk	Melba Ussery
Clerk	Mrs. J. W. Radford
Precinct 16-34	**Wheatley School, El Vista Road**
Presiding Judge	Harvey L. Bradshaw
Assistant Judge	Alfred L. McElroy
Clerk	Johnita Henderson
Clerk	Jewel Gordon
Clerk	Artholia Polk
Precinct 1-57	**Central Fire Station**
Presiding Judge	Mrs. J. D. Guidry
Assistant Judge	Aline Miller
Clerk	Mrs. Jeanette Hebert
Clerk	Flo Murphy
Clerk	Mrs. G. D. Bostick

Precinct 2-56	**Our Lady of Guadalupe Recreational Hall, 126 - 15th Street**
Presiding Judge	**Mrs. Linda Cobb**
Assistant Judge	**Mildred Little**
Clerk	**Mrs. Nola Irby**
Clerk	**Mrs. J. A. Guidry**
Precinct 5-54	**Woodrow Wilson Jr. High School**
Presiding Judge	**Walter S. Hayes**
Assistant Judge	**Mrs. John LeBlanc**
Clerk	**Mrs. A. O. McFatter**
Clerk	**Mrs. J. P. Nelson**
Clerk	**A. O. McFatter**
Precinct 6-55	**Jack's Tire Service, 949 Gulfway Drive**
Presiding Judge	**Mrs. C. A. Garner**
Assistant Judge	**Mrs. Mildred Triendle**
Clerk	**Mrs. S. R. Hensley**
Precinct 7-53	**DeQueen School - DeQueen Blvd. & Seventh Street**
Presiding Judge	**Mrs. Addie B. Derr**
Assistant Judge	**Mrs. Ethel B. Tate**
Clerk	**Mrs. Amy Treadwell**
Clerk	**L. E. Treadwell**
Clerk	**Mrs. F. E. McGlothlen**
Precinct 8-52	**Clegg Motors, 2800 - 16th St.**
Presiding Judge	**Savell Justice**
Assistant Judge	**Mrs. W. R. McDuffie**
Clerk	**Mrs. H. A. Williams**
Clerk	**Mrs. J. L. Chelette**
Clerk	**Mrs. Savell Justice**

Precinct 9-50	**Tenth Street Fire Station, Second Ave. & Tenth Street**
Presiding Judge	**C. W. Loeb**
Assistant Judge	**Mrs. Fred Fuselier**
Clerk	**Mrs. C. E. Howard**
Clerk	**Mrs. W. E. Hall**
Clerk	**C. B. Holter**
Precinct 13-51	**Thomas Edison Field House, 3544 - 12th Street**
Presiding Judge	**Mrs. Carroll Crow**
Assistant Judge	**Mrs. B. E. Lashly**
Clerk	**Mrs. H. M. Putnam**
Clerk	**Mrs. J. C. Siddall**
Clerk	**Mrs. W. T. Anderson**
Precinct 10-49 & 42-60	**Lee Elementary School**
Presiding Judge	**Mrs. J. B. Thomson**
Assistant Judge	**Mrs. Dayton E. Ford**
Clerk	**Mrs. W. B. Jones**
Clerk	**Mrs. F. J. Crookshank**
Clerk	**Mrs. Sam Montroy**
Precinct 12-47	**Fire Station, 3801 Lewis Drive**
Presiding Judge	**C. M. Hightower**
Assistant Judge	**Mrs. J. Earl Whelphly**
Clerk	**Mrs. O. M. Woods**
Clerk	**Mrs. Thomas R. Ryan**
Clerk	**Mrs. C. M. Hightower**
Precinct 11-46	**Park Place Fire Station**
Presiding Judge	**M. W. Henry**
Assistant Judge	**Polly L. Miller**
Clerk	**Mrs. E. H. Hickey**
Clerk	**Mrs. P. A. Angelloz**
Clerk	**Mrs. Buford Wilson**

Precinct 14-44, 45 & 38	3629 Roanoke Avenue
Presiding Judge	Mrs. Santa Kehrly
Assistant Judge	Mrs. J. R. Simon
Clerk	Betty Certa
Clerk	Johnnie Cappadona

P.O. No. 825

ORDINANCE NO. 2882

An Ordinance Declaring the Results of a Special Election (Runoff Election) Held the 23rd Day of April, 1963, for the Purpose of Electing Five (5) City Councilmen From Districts One, Three, Four, Five, and Six; and, Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a Special Election (Runoff Election) was held on Tuesday, the 23rd day of April, A. D., 1963, in the six (6) Districts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said election was held for the purpose of allowing the voters to elect one Councilman from Districts 1, 3, 4, 5, and 6; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said Special Election (Runoff Election) after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said Election for the respective candidates the number of votes shown by the following tabulated statements, to-wit:

Precincts:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	16	17	Abs.	Total
DISTRICT 1																		
Arthur Guidry	110	102	290	295	115	100	191	292	474	479	534	478	239	102	149	273	71	4294
John Byers, Sr.	42	48	175	244	28	81	76	146	139	204	208	224	94	60	72	91	35	1967
DISTRICT 3																		
Leo Hebert, Sr.	98	70	157	188	96	141	185	220	431	452	459	440	252	113	87	169	72	3600
L. F. Nicholson	34	54	189	199	49	119	99	241	212	256	310	298	98	55	116	212	35	2576
DISTRICT 4																		
C. Larry Fontana	119	103	349	379	84	197	160	239	376	405	510	351	220	109	168	259	62	4090
William H. Hall	29	37	57	101	66	83	120	223	270	302	257	391	128	59	32	124	50	2329
DISTRICT 5																		
Virgil L. Bryan	71	56	150	165	66	142	129	151	177	219	273	302	148	46	37	87	43	2262
B. W. Sadler	67	82	220	250	82	128	150	314	459	481	498	442	203	120	148	302	65	4011
DISTRICT 6																		
Wesley M. Dugan, Jr.	71	62	210	240	83	118	166	274	377	412	473	407	211	62	121	247	63	3597
Harry Vaughn	73	73	175	187	64	147	115	187	258	290	305	332	134	109	74	139	46	2708

Section 2. The City Council has determined that said Election was duly called, ordered, and held in accordance with the Laws of the State of Texas, and the City's Charter; that the Ordinance ordering the Election, and the Returns thereof, have been made by the proper officials; and, that the Election resulted in the election of Arthur Guidry, District 1; Leo Hebert, Sr., District 3; C. Larry Fontana, District 4; B. W. Sadler, District 5; and Wesley M. Dugan, Jr., District 6. Premises considered, the aforementioned persons are hereby declared to be elected as City Councilmen of the City of Port Arthur, Texas.

Section 3. This being an ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED AND APPROVED this 24th day of April, A. D., 1963, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor McCollum Councilmen Newsome, Dugan, Hall, Askew, Parker and Guidry; NOES: None.

/s/ R. B. McCOLLUM
R. B. McCollum, Mayor

ATTEST:

/s/ ERNEST W. MEYER
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM AND LEGALITY:

/s/ CARY YOUNG
Cary Young, City Attorney

APPROVED FOR ADMINISTRATION:

/s/ GEORGE E. DIBRELL
George E. Dibrell, City Manager

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 2949 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

P.O. No. 993

ORDINANCE NO. 2949

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Tuesday the 7th Day of April, A. D., 1964, for the Purpose of Electing Three Councilmen; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Tuesday, the 7th day of April, A. D., 1964, in the sixteen (16) Precincts in the six (6) Districts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said election was held for the purposes of allowing the qualified voters to elect one City Councilman from Districts numbered One, Four and Five; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said Election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

COUNCILMAN, DISTRICT 1

Precincts	1	2	3	4	5	6	7	8	9	10	11	12
*Arthur J. Guidry	16	23	62	56	14	31	38	53	83	78	96	87

Precincts	13	14	16	17	Abs.	Total
Arthur J. Guidry	30	31	34	31	5	768

COUNCILMAN, DISTRICT 4

Precincts	1	2	3	4	5	6	7	8	9	10	11	12
C. Larry Fontana	12	22	52	51	13	28	40	53	92	80	94	84

Precincts	13	14	16	17	Abs.	Total
C. Larry Fontana	35	30	33	29	6	754

COUNCILMAN, DISTRICT 5

Precincts	1	2	3	4	5	6	7	8	9	10	11	12
Bernis W. Sadler	15	20	51	46	15	30	41	58	98	79	103	84
Gordy Moss										1		

Precincts	13	14	16	17	Abs.	Total
Bernis W. Sadler	30	33	31	33	5	772
Gordy Moss						1

Section 2. The City Council has determined that said Election was duly called, ordered and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the election of Arthur J. Guidry, C. Larry Fontana, and Bernis W. Sadler to serve as City Councilmen representing Districts 1, 4 and 5 respectively, for a term of two (2) years and until their successors shall have duly qualified.

Section 3. This being an ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED AND APPROVED this 8th day of April, A. D., 1964, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Hayes Councilmen Wyde, Sadler, Guidry, Dugan, Hebert and Fontana; NOES: None.

/s/ LLOYD HAYES
Lloyd Hayes, Mayor

ATTEST:

/s/ ERNEST W. MEYER
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM AND LEGALITY:

/s/ CARY YOUNG
Cary Young, City Attorney

APPROVED FOR ADMINISTRATION:

_____
George E. Dibrell, City Manager

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 2996 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

P.O. No. 1144

ORDINANCE NO. 2996

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Tuesday the 6th Day of April A. D., 1965, for the Purpose of Electing a Mayor and Three Councilmen; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Tuesday, the 6th day of April, A. D., 1965, in the sixteen (16) Precincts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said election was held for the purposes of allowing the qualified voters to elect a Mayor and one City Councilman from Districts numbered Two, Three, and Six; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said Election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

MAYOR

PRECINCTS	1	2	3	4	5	6	7	8	9	10
Lloyd Hayes	118	99	259	243	143	184	226	282	548	589
Mrs. P. Ray LeBlanc	23	24	61	72	20	61	20	41	26	31
R. B. McCollum	24	46	70	80	43	96	79	158	138	147

Precincts	11	12	13	14	15	16	Abs.	Total
Lloyd Hayes	613	632	223	151	278	167	73	4828
Mrs. P. Ray LeBlanc	71	42	30	4	62	50	11	649
R. B. McCollum	262	239	102	15	238	49	15	1801

COUNCILMAN, DISTRICT 2

Precincts	1	2	3	4	5	6	7	8	9	10
R. W. Draughon	36	37	108	95	94	87	156	232	387	456
Maurice F. Conerly	75	74	168	139	70	133	117	157	243	226
William T. Bostick	14	17	47	47	16	36	30	52	48	68

Precincts	11	12	13	14	15	16	Abs.	Total
R. W. Draughon	378	421	165	97	133	65	46	2993
Maurice F. Conerly	432	388	150	55	246	121	40	2834
William T. Bostick	81	71	36	10	41	32	9	655

COUNCILMAN, DISTRICT 3

Precincts	1	2	3	4	5	6	7	8	9	10
C. J. Boudreaux	27	37	95	82	41	47	35	47	33	46
Leo Hebert	86	78	184	151	116	147	203	254	533	549
B. N. Kutcher	23	24	42	53	37	87	66	147	120	131

Precincts	11	12	13	14	16	17	Abs.	Total
C. J. Boudreaux	161	79	31	3	107	37	10	918
Leo Hebert	583	606	229	144	257	141	61	4322
B. N. Kutcher	205	205	89	18	122	34	23	1426

COUNCILMAN, DISTRICT 6

Precincts	1	2	3	4	5	6	7	8	9	10
Frank Philyaw	39	52	146	134	57	139	87	165	143	175
Wesley M. Dugan, Jr.	76	60	177	159	104	112	172	243	476	496
F. W. Blankenship	16	20	26	27	21	40	32	42	48	44

Precincts	11	12	13	14	16	17	Abs.	Total
Frank Philyaw	276	329	96	23	426	125	24	2436
Wesley M. Dugan, Jr.	574	511	212	136	102	114	68	3792
F. W. Blankenship	73	48	30	7	46	10	4	534

Section 2. The City Council has determined that said Election was duly called, ordered and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the election of Lloyd Hayes to serve as Mayor, and Leo Hebert and Wesley M. Dugan, Jr. to serve as City Councilmen representing Districts 3 and 6 respectively, for a term of two (2) years and until their successors shall have duly qualified.

Section 3. It has been determined that there were more than two candidates for the office of Councilman from District No. 2, and none of them received a majority of all votes cast in said District; and, further, that Maurice F. Conerly and R. W. Draughon were the two candidates in District 2 receiving the highest number of votes. It is therefore ordered, pursuant to the provisions of Article III, Section 8 of the City's Charter, that a second election (Runoff Election) shall be held on April 20, 1965, for the purpose of selecting a Councilman from District Number 2. The names of Maurice F. Conerly and R. W. Draughon shall be the only names printed on the ballot in said election.

The present Councilman from District No. 2 shall continue in office until the returns of the Second (Runoff) Election ordered hereby, have been duly canvassed and the Councilman chosen thereby shall have duly qualified.

Section 4. One voting place shall be provided (as shown in "Exhibit A") within each of the Precincts into which the City is divided for voting purposes; and said Election shall be held therein by the Election Officers who are hereby appointed and listed by name in "Exhibit A" which is attached hereto and made a part hereof.

Section 5. The provisions of Ordinance No. 2982, where applicable shall govern the holding of said Second Election; provided that blue colored indelible pencils are hereby prescribed for use in checking off voters' names.

Section 6. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED AND APPROVED this 7th day of April, A. D., 1965, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Hayes, Councilmen Wyde, Sadler, Guidry, Dugan, Hebert & Fontana; NOES: None.

/s/ LLOYD HAYES
Lloyd Hayes, Mayor

ATTEST:

/s/ ERNEST W. MEYER
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM AND LEGALITY:

/s/ CARY YOUNG
Cary Young, City Attorney

Precinct 1-57	**Central Fire Station**
Presiding Judge	**Mrs. G. D. Bostick**
Assistant Judge	**Flo Murphy**
Clerk	**Mrs. Jeanette Hebert**
Clerk	**Mrs. Mary Lena**
Clerk	**Mrs. Sara V. Love**
Precinct 2-56	**Our Lady of Guadalupe Recreation Hall 126 15th Street**
Presiding Judge	**Earl Williams**
Assistant Judge	
Clerk	
Clerk	
Precinct 3-58	**West Side Library**
Presiding Judge	**Van Buckner**
Assistant Judge	**Mrs. Rebecca T. Martin**
Clerk	**Mrs. Eva Lee**
Clerk	**Mrs. Theresa S. Bradford**
Clerk	**Mrs. Geraldine Brown**
Precinct 4-59	**Grannis Avenue Fire Station**
Presiding Judge	**A. P. Foley**
Assistant Judge	**Mrs. B. Juanita Washington**
Clerk	**H. E. Gabriel**
Clerk	**Mrs. Ollie Timmons**
Clerk	**Mrs. Mary Alice Hunter**
Precinct 5-54	**Woodrow Wilson Junior High School**
Presiding Judge	**Walter S. Hayes**
Assistant Judge	**Mrs. A. O. McFatter**
Clerk	
Clerk	
Clerk	

Precinct 6-55	**Jack's Tire Service** **949 Gulfway Drive**
Presiding Judge	**Mrs. C. A. Garner**
Assistant Judge	**Mrs. Gordy Moss**
Clerk	**Mrs. Mildred Trundle**
Clerk	**Mrs. C. L. Chappell**
Clerk	**Mrs. Julius Broussard**
Precinct 7-53	**DeQueen School - DeQueen Blvd. & Seventh Street**
Presiding Judge	**Mrs. Addie B. Derr**
Assistant Judge	**Mrs. Ethel B. Tate**
Clerk	**Mrs. Amy Treadwell**
Clerk	**L. E. Treadwell**
Clerk	**Mrs. R. B. Camp**
Precinct 8-52	**Clegg Motors, 2800 Gulfway Drive**
Presiding Judge	**Savell Justice**
Assistant Judge	**Mrs. J. L. Chelette**
Clerk	**Mrs. H. A. Williams**
Clerk	**Mrs. Savell Justice**
Clerk	
Precinct 9-50	**Tenth Street Fire Station** **Second Avenue & Tenth Street**
Presiding Judge	**C. W. Loeb**
Assistant Judge	**C. B. Holter**
Clerk	**Mrs. Fred Fuselier**
Clerk	**Mrs. C. E. Howard**
Precinct 10-49	**Lee Elementary School**
Presiding Judge	**Mrs. J. B. Thomson**
Assistant Judge	**Mrs. Dayton E. Ford**
Clerk	**Mrs. W. B. Jones**
Clerk	**Mrs. Sam Montroy**
Clerk	**Mrs. H. C. Deloney**

Precinct 11-46	**Park Place Fire Station**
Presiding Judge	M. W. Henry
Assistant Judge	Polly L. Miller
Clerk	Mrs. E. H. Hickey
Clerk	Mrs. P. A. Angelloz
Clerk	Mrs. Buford Wilson
Precinct 12-47 & 71	**Fire Station, 3801 Lewis Drive**
Presiding Judge	C. M. Hightower
Assistant Judge	Mrs. J. Earl Whelply
Clerk	Mrs. Thomas R. Ryan
Clerk	Mrs. C. M. Hightower
Clerk	Mrs. Nannie McAdams
Precinct 13-51	**Thomas Edison Field House 3544 12th Street**
Presiding Judge	Mrs. Carroll Crow
Assistant Judge	Mrs. B. E. Lashly
Clerk	Mrs. H. M. Putnam
Clerk	Mrs. J. C. Siddall
Clerk	Mrs. W. T. Anderson
Precinct 14-70 & 68	**3629 Roanoke Avenue**
Presiding Judge	Mrs. Santa Kehrly
Assistant Judge	Mrs. O. D. Strickland
Clerk	Annie Cappadonna
Clerk	Mary Ann Trahan
Precinct 15-33	**Port Acres Fire Station**
Presiding Judge	Mrs. L. E. Grand
Assistant Judge	Mrs. J. W. Radford
Clerk	Mrs. H. L. Baggs
Clerk	Mrs. Douglas Jones
Clerk	Mrs. Joe Kelsey

Precinct 16-34 & 69	Wheatley School, El Vista Road
Presiding Judge	Harvey L. Bradshaw
Assistant Judge	Alfred L. McElroy
Clerk	Johnita Henderson
Clerk	Jewel Gordon
Clerk	Artholia Polk

P.O. No. 1146

ORDINANCE NO. 2999

An Ordinance Declaring the Results of a Special Election (Runoff Election) Held the 20th Day of April, 1965, for the Purpose of Electing One City Councilman From District Two; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a Special (Runoff) Election was held on Tuesday, the 20th day of April, 1965, in the City of Port Arthur, for the purpose of electing one Councilman from District No. 2; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said Special (Runoff) Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said Election for the respective candidates the number of votes shown by the following tabulated statements, to-wit:

DISTRICT 2

PRECINCTS	1	2	3	4	5	6	7	8	9	10
R. W. Draughon	18	16	47	47	44	53	92	148	302	375
Maurice F. Conerly	26	39	102	71	43	58	54	98	151	139

PRECINCTS	11	12	13	14	16	17	ABS.	TOTAL
R. W. Draughon	208	272	81	92	87	18	12	1917
Maurice F. Conerly	258	231	76	24	142	99	16	1629

Section 2. The City Council has determined that said Election was duly called, ordered, and held in accordance with the Laws of the State of Texas, and the City's Charter; that the Ordinance ordering the Election, and the Returns thereof, have been made by the proper officials; and that R. W. Draughon received a majority of the votes cast in said election; and the said R. W. Draughon is hereby declared to be elected as City Councilman of the City of Port Arthur, Texas, from District No. 2.

Section 3. This being an ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED AND APPROVED this 21 day of April, A. D., 1965, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Hayes, Councilmen Wyde, Sadler, Guidry, Dugan, Hebert & Fontana; NOES: None.

/s/ LLOYD HAYES
Lloyd Hayes, Mayor

ATTEST:

/s/ ERNEST W. MEYER
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM AND LEGALITY:

_____
Cary Young, City Attorney

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 66-31 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

P.O. No. 1229

ORDINANCE NO. 66-31

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Tuesday the 5th Day of April, A. D., 1966, for the Purpose of Electing Four Councilmen; and Providing for the Effective Date Hereof.

WHEREAS in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Tuesday, the 5th day of April, A. D., 1966, in the seventeen (17) Precincts in the six (6) Districts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS said election was held for the purposes of allowing the qualified voters to elect one City Councilman from Districts numbered One, Three, Four and Five; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1: The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said Election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

COUNCILMAN, DISTRICT 1

PRECINCTS	1	2	3	4	5	6	7	8	9	10	11	12
*Irvin W. Buckner	41	74	165	193	25	100	26	36	40	52	49	71
*Arthur J. Guidry	94	126	250	266	125	188	225	271	634	629	687	660
*Clarence Mann	70	110	288	298	41	136	24	48	24	33	44	52

Precincts	13	14	15	16	17	Abs.	Total
Irvin W. Buckner	26	6	47	111	12	5	1079
Arthur J. Guidry	263	127	325	165	63	35	5133
Clarence Mann	20	6	40	162	9	12	1417

COUNCILMAN, DISTRICT 3

Precincts	1	2	3	4	5	6	7	8	9	10	11	12
D. H. Ferrell	87	102	199	225	127	191	245	302	653	701	729	763

Precincts	13	14	15	16	17	Abs.	Total
D. H. Ferrell	292	133	379	140	78	31	5377

COUNCILMAN, DISTRICT 4

Precincts	1	2	3	4	5	6	7	8	9	10	11	12
C. Larry Fontana	68	49	81	69	129	139	260	298	675	700	737	748
*Claude Ellis	152	263	632	723	69	310	28	71	46	43	72	75

Precincts	13	14	15	16	17	Abs.	Total
C. Larry Fontana	298	125	401	64	83	33	4957
Claude Ellis	32	14	59	399	6	19	3013

COUNCILMAN, DISTRICT 5

Precincts	1	2	3	4	5	6	7	8	9	10	11	12
Bernis W. Sadler	99	127	245	266	134	235	257	326	674	699	760	774

Precincts	13	14	15	16	17	Abs.	Total
Bernis W. Sadler	309	135	410	174	81	31	5736

Section 2. The City Council has determined that said Election was duly called, ordered and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the election of Arthur J. Guidry, C. Larry Fontana, and Bernis W. Sadler to serve as City Councilmen representing Districts 1, 4, and 5 respectively, for a term of two (2) years

and D. H. Ferrell to serve as City Councilman representing District 3 for a term of one (1) year and until their successors shall have duly qualified.

Section 3. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 6th day of April, A. D., 1966, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Pro Tem Sadler, Councilmen Ferrell, Dugan, Fontana, and Draughon; NOES: None.

/s/ BERNIS W. SADLER
Bernis W. Sadler, Mayor Pro Tem

ATTEST:

/s/ ERNEST W. MEYER
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM AND LEGALITY:

/s/ GEORGE WIKOFF
George Wikoff, Acting City Attorney

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 67-19 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

ORDINANCE NO. 67-19

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Tuesday the 4th Day of April A. D., 1967, for the Purpose of Electing a Mayor and Three Councilmen; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Tuesday, the 4th day of April, A. D., 1967, in the seventeen (17) Precincts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said election was held for the purposes of allowing the qualified voters to elect a Mayor and one City Councilman from Districts numbered Two, Three, and Six; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said Election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

MAYOR

PRECINCTS	1	2	3	4	5	6	7	8	9	10	11	12	13
Lloyd Hayes	36	46	114	81	55	88	103	113	291	344	380	306	141

PRECINCTS	14	15	16	17	ABS.	TOTAL
Lloyd Hayes	82	171	87	33	32	2503

COUNCILMAN, DISTRICT 2

Precincts	1	2	3	4	5	6	7	8	9	10	11	12	13
R. W. Draughon	27	35	95	60	52	64	91	108	275	345	331	293	135

Precincts	14	15	16	17	Abs.	Total
R. W. Draughon	80	140	73	26	34	2264

COUNCILMAN, DISTRICT 3

Precincts	1	2	3	4	5	6	7	8	9	10	11	12	13
D. H. Ferrell	30	29	97	59	52	57	96	109	273	334	330	285	127

Precincts	14	15	16	17	Abs.	Total
D. H. Ferrell	79	139	65	26	30	2217

COUNCILMAN, DISTRICT 6

Precincts	1	2	3	4	5	6	7	8	9	10	11
Wesley M. Dugan, Jr.	20	19	63	42	33	29	56	77	143	223	208
Dave Smith, Jr.	27	40	66	60	33	90	73	77	159	168	263

Precincts	12	13	14	15	16	17	Abs.	Total
Wesley M. Dugan, Jr.	188	88	51	62	42	8	31	1383
Dave Smith, Jr.	172	73	43	233	71	32	8	1688

Section 2. The City Council has determined that said Election was duly called, ordered and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the election of Lloyd Hayes, to serve as Mayor, and R. W. Draughon, D. H. Ferrell, and Dave Smith, Jr. to serve as City Councilmen representing Districts 2, 3, and 6 respectively, for a term of two (2) years and until their successors shall have duly qualified.

Section 3. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 5th day of April, A. D., 1967, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Hayes, Councilmen Draughon, Guidry, Dugan & Fontana; NOES: None.

/s/ LLOYD HAYES
Lloyd Hayes, Mayor

ATTEST:

/s/ ERNEST W. MEYER
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM AND LEGALITY:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 68-11 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

P.O. No. 1340

ORDINANCE NO. 68-11

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Tuesday the 2nd Day of April, A. D. 1968, for the Purpose of Electing Three Councilmen; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Tuesday, the 2nd day of April, A. D., 1968, in the seventeen (17) Precincts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said election was held for the purposes of allowing the qualified voters to elect one City Councilman from Districts numbered One, Four, and Five; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said Election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

COUNCILMAN, DISTRICT 1

PRECINCTS	1	2	3	4	5	6	7	8	9	10	11	12
*Amos J. Evans	36	69	218	241	28	102	36	73	87	100	173	137
*Arthur J. Guidry	81	118	287	299	106	188	192	242	510	539	641	563
*Paul I. Cadora	20	25	42	58	14	37	24	35	34	38	65	76

Precincts	13	14	15	16	17	Abs.	Total
Amos J. Evans	89	15	108	111	27	26	1726
Arthur J. Guidry	160	162	303	196	45	50	4682
Paul I. Cadora	30	4	46	28	18	11	605

COUNCILMAN, DISTRICT 4

Precincts	1	2	3	4	5	6	7	8	9	10	11	12
C. Larry Fontana	88	130	297	323	111	191	165	201	423	417	487	403
W. H. Hall	38	50	154	170	35	98	88	152	209	268	396	440

Precincts	13	14	15	16	17	Abs.	Total
C. Larry Fontana	210	118	268	211	42	47	4132
W. H. Hall	172	61	196	80	50	37	2694

COUNCILMAN, DISTRICT 5

Precincts	1	2	3	4	5	6	7	8	9	10	11	12
William Jones	35	49	133	156	38	92	72	121	155	216	288	382
Bernis W. Sadler	82	120	284	325	109	187	180	229	482	463	600	455

Precincts	13	14	15	16	17	Abs.	Total
William Jones	143	45	141	79	49	37	2231
Bernis Sadler	239	136	318	206	43	44	4502

Section 2. The City Council has determined that said Election was duly called, ordered, and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the election of Arthur J. Guidry, C. Larry Fontana, and Bernis W. Sadler to serve as City Councilmen representing Districts 1, 4, and 5 respectively, for a term of two (2) years and until their successors shall have duly qualified.

Section 3. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 3rd day of April, A. D., 1968, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Hayes, Councilmen Draughon, Sadler, Guidry, Smith & Fontana; NOES: None.

/s/ LLOYD HAYES
Lloyd Hayes, Mayor

ATTEST:

/s/ ERNEST W. MEYER
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM AND LEGALITY:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 69-07 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

ORDINANCE NO. 69-07

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Tuesday the 1st Day of April, A.D., 1969, for the Purpose of Electing a Mayor and Three Councilmen; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Tuesday, the 1st day of April, A. D., 1969, in the eighteen (18) Precincts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said election was held for the purposes of allowing the qualified voters to elect a Mayor and one City Councilman from Districts numbered Two, Three, and Six; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said Election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

MAYOR

PRECINCTS	1	2	3	4	5	6	7	8	9	10	11
Bernie Sadler	74	117	285	272	94	189	181	242	433	513	660
Roy B. McCollum	15	19	26	30	30	51	67	70	123	143	134

PRECINCTS	12	13	14	15	16	17	18	ABS.	TOTAL
Bernie Sadler	549	275	130	352	227	65	21	146	4825
Roy B. McCollum	179	55	29	91	15	20	3	26	1126

COUNCILMAN, DISTRICT 2

PRECINCTS	1	2	3	4	5	6	7	8	9	10	11
R. W. Draughon	29	29	74	91	60	65	139	172	375	396	392
Maurice Conerly	47	73	185	150	55	141	91	113	169	238	359
H. H. Cain	5	12	9	10	3	14	11	14	11	17	23

PRECINCTS	12	13	14	15	16	17	18	ABS.	TOTAL
R. W. Draughon	362	179	102	137	61	24	7	109	2803
Maurice Conerly	336	141	50	243	124	62	14	56	2647
J. H. Cain	25	9	4	28	17	0	3	8	223

COUNCILMAN, DISTRICT 3

PRECINCTS	1	2	3	4	5	6	7	8	9	10	11
D. H. Ferrell	52	75	174	153	80	162	164	212	413	516	532

PRECINCTS	12	13	14	15	16	17	18	ABS.	TOTAL
D. H. Ferrell	520	248	124	244	119	56	18	127	3989

COUNCILMAN, DISTRICT 6

PRECINCTS	1	2	3	4	5	6	7	8	9	10
Dave Smith, Jr.	60	75	217	173	70	182	137	182	356	426
Wesley M. Dugan, Jr.	20	38	62	84	45	42	108	109	195	222

PRECINCTS	11	12	13	14	15	16	17	18	ABS.	TOTAL
Dave Smith, Jr.	488	447	213	94	354	173	53	14	112	3826
Wesley M. Dugan, Jr.	304	276	110	63	98	58	28	9	56	1927

Section 2. The City Council has determined that said Election was duly called, ordered and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the election of Bernis Sadler to serve as Mayor, and R. H. Ferrell and Dave Smith, Jr. to serve as City Councilmen representing Districts 3 and 6 respectively, for a term of two (2) years until their successors shall have duly qualified.

Section 3. It has been determined that there were more than two candidates for the office of Councilman from District No. 2, and none of them received a majority of all votes cast in said District; and, further, that R. W. Draughon and Maurice Conerly were the two candidates in District 2 receiving the highest number of votes. It is therefore ordered, pursuant to the provisions of Article III, Section 8 of the City's Charter, that a second election (Runoff Election) shall be held on April 15, 1969, for the purpose of selecting a Councilman from District Number 2. The names of R. W. Draughon and Maurice Conerly shall be the only names printed on the ballot in said election.

The present Councilman from District No. 2 shall continue in office until the returns of the Second (Runoff) Election ordered hereby, have been duly canvassed and the Councilman chosen thereby shall have duly qualified.

Section 4. One voting place shall be provided (as shown in "Exhibit A") within each of the Precincts into which the City is divided for voting purposes; and said Election shall be held therein by the Election Officers who are hereby appointed and listed by name in "Exhibit A" which is attached hereto and made a part hereof.

Section 5. The provisions of Ordinance No. 69-04, where applicable shall govern the holding of said Second Election; provided that red colored indelible pencils are hereby prescribed for use in checking off voters' names.

Section 6. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 2nd day of April, A. D., 1969, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES:

Mayor Hayes, Councilman Draughon, Ferrell, Smith, Sadler, Fontana, Guidry; NOES: None.

/s/ Lloyd Hayes
Lloyd Hayes, Mayor

Attest:

/s/ Ernest W. Meyer
Ernest W. Meyer, City Secretary

Approved as to Form and Legality:

/s/ George Wikoff
George Wikoff, City Attorney

Precinct 1-57	**Central Fire Station**
Presiding Judge	**Mrs. C. L. Murphy**
Assistant Judge	**Mrs. Sara Love**
Clerk	**Mrs. Jeanette Hebert**
Precinct 2-56	**Our Lady of Guadalupe Recreation Hall 126 15 Street**
Presiding Judge	**Earl L. Williams**
Assistant Judge	**Mrs. Salvador Ybarra**
Clerk	**Mrs. Ruth Irene McCall**
Clerk	**Mrs. W. M. Guillory**
Precinct 3-58	**West Side Library**
Presiding Judge	**Van Buckner**
Assistant Judge	**Mrs. Rebecca T. Martin**
Clerk	**Mrs. Katie Pitre**
Clerk	**Mrs. Ruth Wesson**
Precinct 4-59	**Grannis Avenue Fire Station**
Presiding Judge	**Hosea E. Gabriel**
Assistant Judge	**Mary Alice Hunter**
Clerk	**Mrs. Vernice M. Moore**
Clerk	**Mrs. Annie Mae Ratcliff**
Clerk	**Miss Velma Jacquet**
Precinct 5-54	**Woodrow Wilson Junior High School**
Presiding Judge	**Mrs. A. O. McFatter**
Alternate Judge	**Mrs. L. W. Beckcom**
Clerk	**Florine Carney**
Clerk	**Lee V. Richardson**
Precinct 6-55	**949 Gulfway Drive**
Presiding Judge	**Mrs. Gordy Moss**
Alternate Judge	**Mrs. Charles Licatino**
Clerk	**Mrs. A. L. Borne**
Clerk	**Mrs. Leona C. Gillard**

Precinct 7-53	DeQueen School
Presiding Judge	L. E. Treadwell
Assistant Judge	Mrs. Amy Treadwell
Clerk	Mrs. Rosa P. Cammack
Clerk	Mrs. A. P. Musick
Precinct 8-52	Port Lincoln Mercury 2828 Gulfway Drive
Presiding Judge	Mr. M. C. Creswell
Assistant Judge	Mrs. Elizabeth E. Oliver
Clerk	Mrs. B. N. Kutcher
Clerk	Mrs. Marie Chelette
Precinct 9-50	Tenth Street Fire Station
Presiding Judge	Mrs. Clarence E. Howard
Assistant Judge	Mrs. W. E. Hall
Clerk	Mrs. F. E. McGlothlen
Clerk	Mrs. Fred Fuselier
Precinct 10-49	Lee Elementary School
Presiding Judge	Mrs. J. B. Thomson
Assistant Judge	Mrs. Dayton Ford
Clerk	Mrs. Sam F. Montroy
Clerk	Mrs. William B. Jones
Precinct 11-46	Park Place Fire Station
Presiding Judge	M. W. Henry
Assistant Judge	Mrs. Josephine Bouillion
Clerk	Ruby Lee Angelloz
Clerk	Mrs. J. T. Self, Jr.
Precinct 12-47	Lewis Drive Fire Station
Presiding Judge	Mrs. Thomas Ryan
Assistant Judge	Mrs. Raymond Armstrong
Clerk	Mrs. Nannie McAdams
Clerk	Mrs. C. M. Hightower

Precinct 13-51	**Thomas Edison Field House**
Presiding Judge	**J. W. Stasney**
Assistant Judge	**Mrs. Francis LeBlanc**
Clerk	**Mrs. Joyce Campbell**
Clerk	**Mrs. O. E. Goulas**
Precinct 14-70-43	**3839 Drexel**
Presiding Judge	**Mrs. O. D. Strickland**
Assistant Judge	**Mrs. Betty Foster Certa**
Clerk	**Mrs. Nelson Eidom**
Clerk	**Mrs. Doris M. Harmon**
Precinct 15-33	**Port Acres Fire Station**
Presiding Judge	**Mrs. L. E. Grand**
Assistant Judge	**Mrs. H. L. Baggs**
Clerk	**Mrs. Douglas Jones**
Clerk	**Mrs. J. W. Radford**
Precinct 16-34	**Wheatley School, El Vista Road**
Presiding Judge	**Roger Wells**
Assistant Judge	**Jewel Gordon**
Clerk	**Ada Mae Scypion**
Clerk	**Artholia Polk**
Precinct 17-71	**2716 Upton Drive**
Presiding Judge	**Joe Leger**
Assistant Judge	**Connie Smith**
Clerk	**Mrs. Joe Leger**
Clerk	**Mrs. Connie Smith**
Precinct 18-68-69	**Nettle Lumber Yard** **7851 Brazos**
Presiding Judge	**Mrs. C. E. Hilton**
Assistant Judge	**Mamie Lu Nettle**
Clerk	**Mrs. P. V. LeBleu**
Clerk	**Mrs. C. E. Hilton**

ORDINANCE NO. 69-12

An Ordinance Declaring the Results of a Special Election (Runoff Election) Held the 15th Day of April, 1969, for the Purpose of Electing One City Councilman From District Two; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a Special (Runoff) Election was held on Tuesday, the 15th day of April, 1969, in the City of Port Arthur, for the purpose of electing one Councilman from District No. 2; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said Special (Runoff) Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said Election for the respective candidates the number of votes shown by the following tabulated statements, to-wit:

DISTRICT 2

PRECINCTS	1	2	3	4	5	6	7	8	9	10	11	12
R. W. Draughon	23	23	59	65	47	49	116	91	282	344	245	265
Maurice F. Conerly	41	59	168	152	34	90	66	76	111	197	293	264

PRECINCTS	13	14	15	16	17	18	ABS.	TOTAL
R. W. Draughon	108	72	73	27	16	2	74	1981
Maurice F. Conerly	96	28	190	132	62	10	15	2084

Section 2. The City Council has determined that said Election was duly called, ordered, and held in accordance with the Laws of the State of Texas, and the City's

Charter; that the Ordinance ordering the Election, and the Returns thereof, have been made by the proper officials; and that Maurice F. Conerly received a majority of the votes cast in said election; and the said Maurice F. Conerly is hereby declared to be elected as City Councilman of the City of Port Arthur, Texas, from District No. 2.

Section 3. This being an ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 16th day of April, A. D., 1969, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Guidry, Fontana, Ferrell, Draughon, Smith; NOES: None.

/s/ BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

/s/ ERNEST W. MEYER
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM AND LEGALITY:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 70-29 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

ORDINANCE NO. 70-29

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Tuesday the 7th Day of April, A. D., 1970, for the Purpose of Electing Three Councilmen and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Tuesday, the 7th day of April, A. D., 1970, in the eighteen (18) precincts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said election was held for the purposes of allowing the qualified voters to elect one Councilman from Districts numbered One, Four and Five; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said Election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

COUNCILMAN, DISTRICT I

PRECINCTS	1	2	3	4	5	6	7	8	9	10	11
*Amos J. Evans	61	117	345	315	38	153	53	118	86	98	166
*Arthur J. Guidry	79	99	200	266	108	209	195	230	449	539	660

PRECINCTS	12	13	14	15	16	17	18	ABS.	TOTAL
Amos J. Evans	156	77	18	130	192	15	9	24	2171
Arthur J. Guidry	673	182	168	280	172	68	7	76	4660

COUNCILMAN, DISTRICT IV

Precincts	1	2	3	4	5	6	7	8	9	10	11	12
C. Larry Fontana	73	91	312	288	71	216	145	151	210	232	288	300
Malcolm L. Clark	37	83	127	138	69	110	107	186	347	431	565	565

Precincts	13	14	15	16	17	18	Abs.	Total
C. Larry Fontana	148	51	148	201	27	4	61	3017
Malcolm L. Clark	116	148	270	101	59	15	34	3508

COUNCILMAN, DISTRICT V

Precincts	1	2	3	4	5	6	7	8	9	10	11
Lee D. "Bob" Jordan	9	10	25	44	5	16	7	16	8	14	53
Fred Huber	44	53	174	174	58	87	133	137	382	420	410
*Frank Collazo, Jr.	39	105	125	127	35	106	47	89	61	75	157
Cecil Placette	29	21	108	80	41	125	75	110	108	151	263

Precincts	12	13	14	15	16	17	18	Abs.	Total
Lee D. "Bob" Jordan	28	5	5	10	15	5	0	5	280
Fred Huber	437	140	99	152	108	50	7	57	3122
Frank Collazo, Jr.	130	28	10	79	132	14	5	9	1373
Cecil Placette	282	201	87	192	81	17	9	26	2006

Section 2. The City Council has determined that said Election was duly called, ordered, and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the election of Arthur J. Guidry and Malcolm L. Clark to serve as City Councilmen representing Districts 1 and 4 respectively, for a term of two (2) years and until their successors shall have duly qualified.

Section 3. It has been determined that there were more than two candidates for the office of Councilman from District No. 5, and none of them received a majority of all votes cast in said District; and further, that Fred Huber and Cecil Placette the two candidates in District 5 receiving the highest number of votes. It is therefore ordered, pursuant to the provisions of Article III, Sec-

tion 8 of the City's Charter, that a special election (Runoff Election) shall be held on April 21st, 1970, for the purpose of selecting a Councilman from District Number 5. The names of Fred Huber and Cecil Placette shall be the only names printed on the ballot in said election.

The present Councilman from District No. 5 shall continue in office until the returns of the Special (Runoff) Election ordered hereby, have been duly canvassed and the Councilman chosen thereby shall have duly qualified.

Section 4. One voting place shall be provided (as shown in "Exhibit A") within each of the Precincts into which the City is divided for voting purposes; and said Election shall be held therein by the Election Officers who are hereby appointed and listed by name in "Exhibit A" which is attached hereto and made a part hereof.

Section 5. The provisions of Ordinance No. 70-05, where applicable shall govern the holding of said Special Election; provided that red colored indelible pencils are hereby prescribed for use in checking off voters' names.

Section 6. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 8th day of April, A. D., 1970, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Ferrell, Guidry, Conerly, Huber, Fontana, Smith; NOES: None.

/s/ BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

/s/ ERNEST W. MEYER
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM AND LEGALITY:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

Precinct 1-57	*Central Fire Station*
Presiding Judge	Mrs. C. L. Murphy
Assistant Judge	Mrs. Clevester Godfrey
Clerk	Mrs. Jeanette Hebert
Precinct 2-56	*Our Lady of Guadalupe Recreation Hall* 126 15th Street
Presiding Judge	Earl L. Williams
Assistant Judge	Mrs. Salvador Ybarra
Clerk	Mrs. Ruth Irene McCall
Clerk	Mrs. Thelma Alexander
Precinct 3-58	*West Side Library*
Presiding Judge	Van Buckner
Assistant Judge	Mrs. Rebecca T. Martin
Clerk	Mrs. Katie Pitre
Clerk	Mrs. Ruth Wesson
Clerk	Mrs. Eva Lee
Precinct 4-59	*Grannis Avenue Fire Station*
Presiding Judge	Hosea E. Gabriel
Assistant Judge	Mary Alice Hunter
Clerk	Mrs. Vernice M. Moore
Clerk	Mrs. Annie Mae Ratcliff
Clerk	Mrs. Velma J. Davis
Precinct 5-54	*Woodrow Wilson Junior High School*
Presiding Judge	Mrs. A. O. McFatter
Assistant Judge	Mrs. L. W. Beckcom
Clerk	Lee V. Richardson
Clerk	Mrs. J. B. Johnson
Precinct 6-55	*1549 Gulfway*
Presiding Judge	Mrs. Gordy Moss
Assistant Judge	Mrs. Charles Licatino
Clerk	Mrs. A. L. Borne
Clerk	Mrs. Leona C. Gillard
Clerk	Mrs. Mildred Bergeron

Precinct 7-53	*DeQueen School*
Presiding Judge	Mrs. Dan Johnson
Assistant Judge	Mrs. B. T. Brown
Clerk	Mrs. Rosa P. Cammack
Clerk	Mrs. J. P. Musick

Precinct 8-52	*2530 Gulfway Drive*
Presiding Judge	Mr. M. C. Creswell
Assistant Judge	Mrs. M. C. Creswell
Clerk	Mr. B. N. Kutcher
Clerk	Mrs. B. N. Kutcher
Clerk	Mrs. Marie Chelette

Precinct 9-50	*Tenth Street Fire Station*
Presiding Judge	Mrs. Clarence E. Howard
Assistant Judge	Mrs. W. E. Hall
Clerk	Mrs. F. E. McGlothlen
Clerk	Mrs. Fred Fuselier

Precinct 10-49	*Lee Elementary School*
Presiding Judge	Mrs. J. B. Thomson
Assistant Judge	Mrs. Dayton Ford
Clerk	Mrs. Sam F. Montroy
Clerk	Mrs. William B. Jones
Clerk	Mrs. H. P. Wylie

Precinct 11-46	*Park Place Fire Station*
Presiding Judge	Mr. M. W. Henry
Assistant Judge	Mrs. Lula Mae Sollis
Clerk	Mrs. J. T. Self, Jr.
Clerk	Mrs. Virginia Girolamo

Precinct 12-47	*Lewis Drive Fire Station*
Presiding Judge	Mrs. Thomas Ryan
Assistant Judge	Mrs. Raymond Armstrong
Clerk	Mrs. Nannie McAdams
Clerk	Mrs. C. M. Hightower
Clerk	Miss Jo Marie Ryan

Precinct 13-51	*Thomas Edison Field House*
Presiding Judge	J. W. Stasney
Assistant Judge	Mrs. Francis LeBlanc
Clerk	Mrs. Joyce Campbell
Clerk	Mrs. O. E. Goulas
Clerk	Betty K. Stasney

Precinct 14-70 & 43	*3839 Drexel*
Presiding Judge	Mrs. O. D. Strickland
Assistant Judge	Mrs. Betty Foster Certa
Clerk	Mrs. Nelson Eidom
Clerk	Mrs. Doris M. Harmon

Precinct 15-33	*Port Acres Fire Station*
Presiding Judge	Mrs. L. E. Grand
Assistant Judge	Mrs. H. L. Baggs
Clerk	Mrs. Douglas Jones
Clerk	Mrs. J. W. Radford

Precinct 16-34	*Wheatley School, El Vista Road*
Presiding Judge	Roger Wells
Assistant Judge	Jewel Gordon
Clerk	Artholia Polk
Clerk	Ophelia Jacobs

Precinct 17-71	*2716 Upton Drive*
Presiding Judge	Joe Leger
Assistant Judge	Connie Smith
Clerk	Mrs. Joe Leger
Clerk	Mrs. Connie Smith

Precinct 18-68 & 69	*Nettle Lumber Yard* 7851 Brazos
Presiding Judge	Mrs. C. E. Hilton
Assistant Judge	Mrs. Mamie Lee Nettles
Clerk	Mrs. P. V. LeBleu
Clerk	Mr. P. V. LeBleu

P.O. No. 1485

ORDINANCE NO. 70-39

An Ordinance Declaring the Results of a Special Election (Runoff Election) Held the 21st Day of April, 1970, for the Purpose of Electing One City Councilman From District Five; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a Special (Runoff) Election was held on Tuesday, the 21st day of April, 1970, in the City of Port Arthur, for the purpose of electing one Councilman from District No. 5; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said Special (Runoff) Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said Election for the respective candidates the number of votes shown by the following tabulated statements, to-wit:

DISTRICT 5

PRECINCTS	1	2	3	4	5	6	7	8	9	10	11	12
Fred Huber	29	42	98	79	46	49	100	99	274	326	370	346
Cecil Placette	55	45	137	124	39	107	87	101	133	166	317	312

PRECINCTS	13	14	15	16	17	18	ABS.	TOTAL
Fred Huber	122	91	114	61	51	6	34	2337
Cecil Placette	233	70	183	102	21	7	23	2262

Section 2. The City Council has determined that said Election was duly called, ordered, and held in accordance with the Laws of the State of Texas, and the City's Charter; that the Ordinance ordering the Election, and the Returns thereof, have been made by the proper officials; and that Fred Huber received a majority of the votes cast in said election; and the said Fred Huber is hereby declared to be elected as City Councilman of the City of Port Arthur, Texas, from District No. 5.

Section 3. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 22nd day of April, A. D., 1970, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Ferrell, Guidry, Conerly, Huber, Clark, Smith; NOES: None.

/s/ BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

/s/ ERNEST W. MEYER
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM AND LEGALITY:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 71-24 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

ORDINANCE NO. 71-24

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Tuesday the 6th Day of April, A.D., 1971, for the Purpose of Electing a Mayor and Three Councilmen; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Tuesday, the 6th day of April, A.D., 1971, in the sixteen (16) Precincts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said election was held for the purposes of allowing the qualified voters to elect a Mayor and One City Councilman from Districts numbered Two, Three, and Six; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

MAYOR

PRECINCTS	1	2	3	4	5	6	7	8	9	10
Bernis W. Sadler	133	133	153	128	131	268	282	628	719	978
W. B. Goudeau, Jr.	291	487	608	88	198	46	171	20	19	23

PRECINCTS	11	12	13	14	15	16	ABS.	TOTAL
Bernis W. Sadler	891	406	224	519	88	94	216	5991
*W. B. Goudeau, Jr.	23	15	5	78	440	4	48	2564

COUNCILMAN, DISTRICT 2

PRECINCTS	1	2	3	4	5	6	7	8	9	10
Maurice Conerly	85	82	106	77	104	166	186	418	509	662

PRECINCTS	11	12	13	14	15	16	ABS.	TOTAL
Maurice Conerly	619	269	163	327	63	81	178	4095

COUNCILMAN, DISTRICT 3

PRECINCTS	1	2	3	4	5	6	7	8	9	10
Joe L. James, Jr.	64	82	107	60	81	146	154	411	451	524

PRECINCTS	11	12	13	14	15	16	ABS.	TOTAL
Joe L. James, Jr.	539	220	160	231	51	54	144	3479

COUNCILMAN, DISTRICT 6

PRECINCTS	1	2	3	4	5	6	7	8	9	10
*Gerald S. DeBlanc, Sr.	305	516	625	88	292	49	169	19	12	13
Robert P. Walker	64	52	69	78	77	178	192	473	570	735
Zip Zummo	25	13	9	48	38	83	85	151	155	268

PRECINCTS	11	12	13	14	15	16	ABS.	TOTAL
Gerald S. DeBlanc, Sr.	21	10	2	73	448	2	39	2683
Robert P. Walker	706	313	201	356	49	77	164	4354
Zip Zummo	192	102	25	171	9	19	60	1461

Section 2. The City Council has determined that said Election was duly called, ordered and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the election of Bernis W. Sadler to serve as Mayor, and Maurice Conerly, Joe L. James, Jr., and Robert P. Walker to serve as City Councilmen representing Districts 2, 3, and 6 respectively, for a term of two (2) years and until their successors shall have duly qualified.

Section 3. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 7th day of April, A.D., 1971, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Smith, Ferrell, Guidry, Conerly, Huber & Clark; NOES: None.

/s/ BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

_____
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM AND LEGALITY:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 72-39 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

P.O. No. 1810
4-5-72

ORDINANCE NO. 72-39

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Tuesday the 4th Day of April, A.D., 1972, for the Purpose of Electing Three Councilmen and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Tuesday, the 4th day of April, A.D., 1972, in the sixteen (16) precincts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said election was held for the purposes of allowing the qualified voters to elect one Councilman from Districts numbered One, Four and Five; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

COUNCILMAN, DISTRICT I

PRECINCTS	1	2	3	4	5	6	7	8	9	10
*Arthur J. Guidry	66	108	120	33	58	44	76	183	202	210

Precincts	11	12	13	14	15	16	Abs.	Total
Arthur J. Guidry	206	86	68	104	100	28	20	1712

COUNCILMAN, DISTRICT IV

Precincts	1	2	3	4	5	6	7	8	9	10
Malcolm L. Clark	36	54	59	27	34	34	58	172	202	210

Precincts	11	12	13	14	15	16	Abs.	Total
Malcolm L. Clark	209	82	67	110	58	28	17	1457

COUNCILMAN, DISTRICT V

Precincts	1	2	3	4	5	6	7	8	9	10
Fred Huber	46	64	80	29	36	41	64	200	211	234
Warren E. Jackson	18	29	43	7	27	12	32	33	55	50

Precincts	11	12	13	14	15	16	Abs.	Total
Fred Huber	221	99	69	134	66	27	21	1642
Warren E. Jackson	62	18	11	35	43	6	1	482

Section 2. The City Council has determined that said Election was duly called, ordered, and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the election of Arthur J. Guidry, Malcolm L. Clark, and Fred C. Huber to serve as City Councilmen representing Districts 1, 4, and 5 respectively, for a term of two (2) years and until their successors shall have duly qualified.

Section 3. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

Read, Adopted, and Approved this 17th day of April, A.D., 1972, at a Regular Meeting of the City Council of

the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Huber, Conerly, Guidry, Clark, & James; NOES: None.

/s/ Bernis W. Sadler
Bernis W. Sadler, Mayor

Attest:

/s/ Ernest W. Meyer
Ernest W. Meyer, City Secretary

Approved as to Form and Legality:

/s/ George Wikoff
George Wikoff, City Attorney

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 73-23 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

4-4-73

ORDINANCE NO. 73-23

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Tuesday the 3rd Day of April, A.D., 1973, for the Purpose of Electing a Mayor and Three Councilmen; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Tuesday, the 3rd day of April, A.D., 1973, in the sixteen (16) Precincts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said Election was held for the purposes of allowing the qualified voters to elect a Mayor and one City Councilman from Districts numbered Two, Three, and Six; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

MAYOR

PRECINCTS	1	2	3	4	5	6	7	8	9	10
*W. B. Goudeau, Jr.	118	303	441	45	184	28	109	16	9	14
Virginia Dudley	8	6	9	7	13	13	25	30	32	56
Bernis W. Sadler	65	108	96	55	58	147	166	452	486	682

Precincts	11	12	13	14	15	16	Abs.	Total
W. B. Goudeau, Jr.	16	21	4	72	341	1	9	1,731
Virginia Dudley	31	25	13	36	2	5	2	313
Bernis W. Sadler	612	258	171	291	65	95	99	3,906

COUNCILMAN, DISTRICT 2

Precincts	1	2	3	4	5	6	7	8	9	10
Maurice Conerly	80	137	167	58	107	137	177	407	422	582
Bernard P. Long	32	61	90	22	53	33	77	67	93	113

Precincts	11	12	13	14	15	16	Abs.	Total
Maurice Conerly	545	246	159	264	135	88	93	3,804
Bernard P. Long	95	40	22	74	84	13	15	984

COUNCILMAN, DISTRICT 3

Precincts	1	2	3	4	5	6	7	8	9	10
Joe L. James, Jr.	83	153	185	70	126	131	183	399	409	550

Precincts	11	12	13	14	15	16	Abs.	Total
Joe L. James, Jr.	533	210	158	253	144	86	93	3,757

COUNCILMAN, DISTRICT 6

Precincts	1	2	3	4	5	6	7	8	9	10
Robert P. Walker	39	29	37	52	50	130	152	434	480	664
*Sterling J. Landry, Jr.	145	376	498	49	194	43	141	47	41	68

Precincts	11	12	13	14	15	16	Abs.	Total
Robert P. Walker	587	264	176	274	35	88	95	3,586
Sterling J. Landry, Jr.	53	34	10	109	362	10	15	2,195

Section 2. The City Council has determined that said Election was duly called, ordered, and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the election of Bernis W. Sadler to serve as Mayor, and Maurice

Conerly, Joe L. James, Jr., and Robert P. Walker to serve as City Councilmen representing Districts 2, 3, and 6 respectively, for a term of two (2) years and until their successors shall have duly qualified.

Section 3. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 9th day of April, A.D., 1973, at a Special Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Clark, Guidry, Conerly, Walker & James; NOES: None.

/s/ BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

/s/ ERNEST W. MEYER
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM AND LEGALITY.

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 74-17 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

3-3-74

ORDINANCE NO. 74-17

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Tuesday the 2nd Day of April, A.D., 1974, for the Purpose of Electing Three Councilmen and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Tuesday, the 2nd day of April, A.D., 1974, in the sixteen (16) precincts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said election was held for the purposes of allowing the qualified voters to elect one Councilman from Districts numbered One, Four, and Five; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

COUNCILMAN, DISTRICT I

PRECINCTS	1	2	3	4	5	6	7	8	9	10
*Arthur J. Guidry	16	20	54	30	34	28	14	11	17	9

Precincts	11	12	13	14	15	16	Abs.	Total
Arthur J. Guidry	13	8	20	14	14	16	9	327

COUNCILMAN, DISTRICT IV

Precincts	1	2	3	4	5	6	7	8	9	10
Malcolm L. Clark	15	17	54	31	31	31	15	12	16	8

Precincts	11	12	13	14	15	16	Abs.	Total
Malcolm L. Clark	8	6	14	13	15	16	9	311

COUNCILMAN, DISTRICT V

Precincts	1	2	3	4	5	6	7	8	9	10	11
Fred Huber	17	18	57	29	30	29	16	10	17	10	7
W. E. Jackson								1			1

Precincts	12	13	14	15	16	Abs.	Total
Fred Huber	6	18	14	16	16	10	320
W. E. Jackson							2

Section 2. The City Council has determined that said Election was duly called, ordered, and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the election of Arthur J. Guidry, Malcolm L. Clark, and Fred C. Huber to serve as City Councilmen representing District 1, 4, and 5 respectively, for a term of two (2) years and until their successors shall have duly qualified.

Section 3. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 8th day of April, A.D., 1974, at a Special Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Clark, Guidry, Huber, Walker, & James; NOES: None.

/s/ BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

/s/ ERNEST W. MEYER
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 75-17 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

ORDINANCE NO. 75-17

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Tuesday the 1st day of April, A.D., 1975, for the Purpose of Electing a Mayor and Three Councilmen; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Tuesday, the 1st day of April, A.D., 1975, in the sixteen (16) Precincts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said Election was held for the purposes of allowing the qualified voters to elect a Mayor and one City Councilman from Districts numbered Two, Three, and Six; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

MAYOR

PRECINCTS	33-1	34-2	46-3	47&76-4	49-5	50-6	51-7	52-8	53-9	54-10
*W. B. Goudeau, Jr.	141	637	36	39	24	57	61	358	141	137
Bernis W. Sadler	693	35	1213	1198	877	671	407	204	234	86

PRECINCTS	55-11	57-12	58-13	59-14	70&43-15	71-16	ABS.	TOTAL
W. B. Goudeau, Jr.	433	343	512	737	12	10	72	3750
Bernis W. Sadler	65	68	73	69	354	135	218	6600

COUNCILMAN, DISTRICT 2

Precincts	33-1	34-2	46-3	47&76-4	49-5	50-6	51-7	52-8	53-9
*Joseph L. Crook	152	638	45	46	35	66	63	359	136
Maurice Conerly	669	21	1185	1181	861	657	399	192	230

Precincts	54-10	55-11	57-12	58-13	59-14	70&43-15	71-16	Abs.	Total
Joseph L. Crook	132	427	337	496	729	10	8	64	3743
Maurice Conerly	87	67	61	53	49	356	138	220	6426

COUNCILMAN, DISTRICT 3

Precincts	33-1	34-2	46-3	47&76-4	49-5	50-6	51-7	52-8	53-9
*Mrs. Katie Weber	186	628	82	86	44	73	69	373	139
Joe L. James, Jr.	631	22	1148	1134	844	652	389	181	220

Precincts	54-10	55-11	57-12	58-13	59-14	70&43-15	71-16	Abst.	Total
Mrs. Katie Weber	136	420	348	506	751	23	19	71	3954
Joe L. James, Jr.	73	54	53	35	44	345	126	208	6259

COUNCILMAN, DISTRICT 6

Precincts	33-1	34-2	46-3	47&76-4	49-5	50-6	51-7	52-8	53-9
Robert P. Walker	646	32	1153	1132	840	642	398	197	214
*Sterling J. Landry, Jr.	181	563	91	95	57	81	67	350	130

Precincts	54-10	55-11	57-12	58-13	59-14	70&43-15	71-16	Abs.	Total
Robert P. Walker	81	66	61	34	44	351	134	201	6226
Sterling J. Landry, Jr.	122	405	305	492	709	19	12	72	3751

Section 2. The City Council has determined that said Election was duly called, ordered, and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the election of Bernis W. Sadler to serve as Mayor, and Maurice Conerly, Joe L. James, Jr., and Robert P. Walker to serve as City Councilmen representing Districts 2, 3, and 6 respectively, for a term of two (2) years and until their successors shall have duly qualified.

Section 3. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 14th day of April, A.D., 1975, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen James, Conerly, Guidry, Huber, Clark, Walker; NOES: None.

/s/ BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

/s/ ERNEST W. MEYER
Ernest W. Meyer, City Secretary

APPROVED AS TO FORM:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 76-26 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

ORDINANCE NO. 76-26

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Saturday the 3rd Day of April, A.D., 1976, for the Purpose of Electing Three Councilmen; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Saturday, the 3rd day of April, A.D., 1976, in the sixteen (16) Precincts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said Election was held for the purposes of allowing the qualified voters to elect one City Councilman from Districts numbered One, Four, and Five; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

COUNCILMAN, DISTRICT 1

PRECINCTS	33-1	34-2	46-3	47&76-4	49-50	50-6	51-7	52-8	53-9
Arthur J. Guidry	186	99	449	424	357	306	166	105	98
James M. Green, Sr.	156	348	138	127	86	64	73	212	75

Precincts	54-10	55-11	57-12	58-13	59-14	70&43-15	71-16	Abs.	Total
Arthur J. Guidry	57	91	69	125	155	161	43	186	3077
James M. Green, Sr.	74	240	221	391	449	32	9	71	2766

COUNCILMAN, DISTRICT 4

Precincts	33-1	34-2	46-3	47&76-4	49-50	50-6	51-7	52-8	53-9
Malcolm L. Clark	269	173	544	518	418	341	205	173	127

Precincts	54-10	55-11	57-12	58-13	59-14	70&43-15	71-16	Abs.	Total
Malcolm L. Clark	85	169	126	208	232	180	49	205	4022

COUNCILMAN, DISTRICT 5

Precincts	33-1	34-2	46-3	47&76-4	49-5	50-6	51-7	52-8	53-9	54-10
F. J. Gesser	62	49	93	68	43	34	74	41	22	13
C. F. "Fred" Huber	199	95	463	436	379	296	129	103	88	49
Warren E. Jackson	39	109	35	45	23	26	16	69	28	31

Precincts	55-11	57-12	58-13	59-14	70&43-16	71-16	Abs.	Total
C. J. Gesser	25	24	32	78	18	2	15	693
C. F. "Fred" Huber	88	59	129	128	168	43	188	3040
Warren E. Jackson	93	80	103	228	6	7	29	967

Section 2. The City Council has determined that said Election was duly called, ordered, and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the Election of Arthur J. Guidry, Malcolm C. Clark, and C. F. "Fred" Huber to serve as City Councilmen representing Districts 1, 4, and 5 respectively, for a term of two (2) years and until their successors shall have duly qualified.

Section 3. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 12th day of April, A.D., 1976, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Guidry, Conerly, Huber, Clark, Walker, James; NOES: None.

/s/ BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

/s/ CAROLYN DIXON
Carolyn Dixon, Acting City Secretary

APPROVED AS TO FORM:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

CERTIFICATION

THE STATE OF TEXAS,)(
COUNTY OF JEFFERSON.)(

I, Janet Stroder Deputy City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance No. 77-29 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 6th day of January, A.D., 1978.

/s/ JANET STRODER
Deputy City Secretary of the
City of Port Arthur, Texas

(SEAL)

4-4-77

ORDINANCE NO. 77-29

An Ordinance Declaring the Results of a General Election Held in the City of Port Arthur on Saturday the 2nd Day of April, A.D., 1977, for the Purpose of Electing a Mayor and Three Councilmen; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Laws of the State of Texas applicable thereto, a General Election was held on Saturday, the 2nd day of April, A.D., 1977, in the sixteen (16) Precincts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said Election was held for the purposes of allowing the qualified voters to elect a Mayor and one City Councilmen from Districts numbered Two, Three, and Six; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said General Election, after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said election for the respective candidates the number of votes shown by the following tabulated statement, to-wit:

COUNCILMAN, DISTRICT 1

PRECINCTS	33	34	46	47&76	49	50	51	52&53	54
Leon V. Holtzclaw	48	9	64	87	64	35	27	34	9
Billy R. Atkinson	28	0	3	9	6	1	4	4	0
Bernie W. Sadler	792	17	1174	1204	716	541	354	292	73
*Alfred Z. McElroy	165	762	31	36	32	153	134	839	259

Precincts	55	57	58	59	70&43	71	Abs.	Total
Leon V. Holtzclaw	9	6	5	10	20	19	128	574
Billy R. Atkinson	4	2	2	3	1	3	16	86
Bernie W. Sadler	60	53	24	26	382	204	1763	7675
*Alfred Z. McElroy	645	588	641	887	11	0	448	5631

COUNCILMAN, DISTRICT 2

Precincts	33	34	46	47&76	49	50	51	52&53
*Mrs. JoAnn Breaux Benjamin	181	710	47	63	46	156	130	791
Maurice Conerly	822	32	1204	1255	748	556	381	322

Precincts	54	55	57	58	59	70&43	71	Abs.	Total
Mrs. JoAnn Breaux Benjamin	238	590	522	535	789	22	6	419	5245
Maurice Conerly	80	75	62	58	61	392	217	1844	8109

COUNCILMAN, DISTRICT 3

Precincts	33	34	46	47&76	49	50	51	52&53	54
*Paul R. Strawder	205	718	83	79	65	162	146	811	242
Joe L. James	777	34	1150	1221	716	550	359	306	79

Precincts	55	57	58	59	70&43	71	Abs.	Total
Paul Strawder	621	539	571	832	28	16	513	5631
Joe L. James	59	61	56	69	377	205	1717	7736

COUNCILMAN, DISTRICT 6

Precincts	33	34	46	47&76	49	50	51	52&53
E. R. (Ray) Bernard, Jr.	797	29	1186	1244	731	545	357	308
*Ike Linden	209	744	66	71	70	169	151	827

Precincts	54	55	57	58	59	70&43	71	Abs.	Total
E. R. (Ray) Bernard, Jr.	73	64	58	24	37	381	209	1728	7771
Ike Linden	253	635	566	633	857	28	14	536	5829

Section 2. The City Council has determined that said Election was duly called, ordered, and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the

Election, and the returns thereof have been made by the proper officials, and that the Election resulted in the election of Bernis W. Sadler to serve as Mayor, and Maurice Conerly, Joe L. James, Jr., and E.R. (Ray) Bernard, Jr. to serve as City Councilmen representing Districts 2, 3, and 6 respectively, for a term of two (2) years and until their successors shall have duly qualified.

Section 3. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 11th day of April, A.D., 1977, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Guidry, Conerly, Huber, Clark, Walker, James; NOES: None.

/s/ BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

/s/ CAROLYN DIXON
Carolyn Dixon, City Secretary

APPROVED AS TO FORM:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

ORDINANCE NO. 77-116

An Ordinance Declaring the Results of a Special Consolidation Election Held in the City of Port Arthur on Tuesday, the 8th Day of November, A.D., 1977.

WHEREAS, on the 19th day of September,A.D., 1977, the City Council of the City of Port Arthur, adopted Ordinance No. 77-94 ordering a Special Election to be held in the City of Port Arthur, on Tuesday, the 8th day of November, A.D., 1977, for the purpose of submitting to the duly qualified voters of said City (as defined in said Ordinance) the following Propositions:

For Consolidation with the City of Pear Ridge
Against the Consolidation with the City of Pear Ridge
For Consolidation with the Town of Lakeview
Against Consolidation with the Town of Lakeview

WHEREAS, the sealed returns of said Election have been duly made to the City Council of the City of Port Arthur, and by such City Council duly examined and canvassed; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR, TEXAS:

Section 1. The sealed returns of said Election from each of fifteen (15) Precincts into which said City is divided for voting purposes, wherein said Election was held, are found to be true and correct.

Section 2. There were cast at said Election in each of said Voting Precincts the number of votes for and against said proposition as shown by the following tabulated statement, to-wit:

CITY OF PEAR RIDGE

PRECINCTS	33	34	46	47&76	49	50	51	52&53	54
FOR	516	105	1068	1103	633	499	299	277	79
AGAINST	59	215	18	13	10	47	34	178	60

PRECINCTS	55	57	58	59	70&43	71	ABS.	TOTAL
FOR	99	71	112	127	384	157	920	6449
AGAINST	161	106	137	152	7	8	18	1223

TOWN OF LAKEVIEW

PRECINCTS	33	34	46	47&76	49	50	51	52&53	54
FOR	504	98	1060	1094	626	492	292	267	76
AGAINST	58	209	23	14	11	52	33	171	51

PRECINCTS	55	57	58	59	70&43	71	ABS.	TOTAL
FOR	91	73	105	124	383	156	912	6353
AGAINST	155	98	132	139	6	8	21	1181

Section 3. It is hereby determined that said Election was duly called, notice was given in accordance with law and in accordance with the Ordinance ordering said Election; the Election was held in accordance with law; due return of said Election has been made by the proper officers; and said Election has resulted favorably to said consolidations with the City of Pear Ridge and the Town of Lakeview, Texas, a majority of the qualified voters voting at said Election having voted in favor of said consolidations.

Section 4. Be it further ordered that this being an Ordinance for which publication is not required under the Charter of the City of Port Arthur, same shall not be published but shall take effect and be in force immediately from and after its passage; and, repealing all Ordinances and parts of Ordinances in conflict herewith.

READ, ADOPTED, AND APPROVED this 14th day of November, A.D., 1977, at a Special Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Conerly, Guidry, Huber, Clark, James, Bernard; NOES: None.

/s/ BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

/s/ CAROLYN DIXON
Carolyn Dixon, City Secretary

APPROVED AS TO FORM:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

Motion to Dismiss or Affirm

1

Office - Supreme Court, U.S.
FILED
DEC 21 [redacted]
ALEXANDER L. STEVAS,
CLERK

No. 81-708

In the Supreme Court of the United States

OCTOBER TERM, 1981

CITY OF PORT ARTHUR, TEXAS, APPELLANT

v.

UNITED STATES OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION TO AFFIRM

REX E. LEE
Solicitor General
WM. BRADFORD REYNOLDS
Assistant Attorney General
WALTER W. BARNETT
MARIE E. KLIMESZ
Attorneys
Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether the district court properly conditioned approval of a plan for electing city officials, submitted to satisfy Section 5 of the Voting Rights Act of 1965 (42 U.S.C. 1973c), on a requirement that the election of two at-large, council members should be decided on a plurality vote in order to neutralize more effectively the adverse racial impact caused by the territorial expansion of the city.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	7
Conclusion	10

TABLE OF AUTHORITIES

Cases:

City of Petersburg v. *United States*, 354 F. Supp. 1021, aff'd, 410 U.S. 962	6, 8
City of Richmond v. *United States*, 422 U.S. 358	6, 8
City of Rome v. *United States*, 472 F. Supp. 228, aff'd, 446 U.S. 156	9
Mosely v. *Sadler*, No. B-78-69-CA (E.D. Tex. Mar. 27, 1979)	4
United Jewish Organizations of Williamsburgh, Inc. v. *Carey*, 430 U.S. 144	8

Statute:

Voting Rights Act of 1965, Section 5, 42 U.S.C. 1973c	3, 8, 9

In the Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-708

CITY OF PORT ARTHUR, TEXAS, APPELLANT

v.

UNITED STATES OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION TO AFFIRM

The Solicitor General, on behalf of the United States, moves, pursuant to Sup. Ct. R. 16(1)(c), that the judgment of the district court in this case be affirmed.

OPINIONS BELOW

The July 14, 1981 order of the district court (J.S. App. 79a-80a) is not reported. The June 12, 1981 opinion of the district court (J.S. App. 1a-75a) is reported at 517 F. Supp. 987.

JURISDICTION

The order of the district court (J.S. App. 79a-80a) was entered on July 14, 1981. The notice of appeal (J.S. App. 81a) was filed on July 21, 1981. The appeal was docketed on October 13, 1981. The jurisdiction of this Court is invoked under 42 U.S.C. 1973c.

STATEMENT

1. Appellant, City of Port Arthur, is located on the southeastern border of Texas (J.S. App. 4a). The total population of the city has decreased from 1960 to 1980, and the percentage of the population that is black has increased from 30.79% to 45.21% (J.S. App. 5a-7a).

In April 1977, following highly racially polarized councilmanic elections, the city began actively pursuing its long-standing goal of consolidation with neighboring communities (J.S. App. 14a-16a).[1] Consequently, the neighboring cities of Pear Ridge and Lakeview were consolidated with Port Arthur on December 1, 1977, following referenda elections in Port Arthur and in both of the other communities (J.S. App. 14a-22a). Pear Ridge and Lakeview contributed 6,008 people, according to the 1980 census, only 80 of whom were black (J.S. App. 22a). Of the total population of the enlarged city, the added areas contained 16% of the whites and less than 1% of the blacks (J.S. App. 23a).

Approximately six months after consolidation with Pear Ridge and Lakeview, the city also annexed an

---

[1] A high level of racial tension existed in the city following the December 29, 1974 shooting by a white policeman of a black youth who was escaping from police custody (J.S. App. 12a). The effects of the increased racial tension were felt in the campaign preceding the April 1977 councilmanic elections (J.S. App. 13a). As part of their campaign against the slate of black candidates, members of the city council placed ads in the local newspaper warning that a black minister was attempting "to rally the local black community to gain control of the city government" (*ibid.*). The election results showed a high degree of racial bloc voting, and the black candidates lost every race by a narrow margin (J.S. App. 14a).

unincorporated area known as Sabine Pass (J.S. App. 25a). The annexed area contributed 501 persons, according to the 1980 census, of whom 31 were black and 18 were Hispanic (*ibid.*). The effect of both expansions was to decrease the percentage of the black population in Port Arthur from 45.21% to 40.56% (J.S. App. 6a).

Prior to the expansion, appellant was governed by a seven-member council, elected at-large by majority vote (J.S. App. 9a-10a). The six, non-mayoral candidates were required to reside in specific districts, but the mayor could reside anywhere within the city (*ibid.*). The mayor was basically a council member who also had a few ceremonial responsibilities (*id.* at 10a). Council members were elected to two-year terms, with three members elected in one year and the other three and the mayor elected the following year (*ibid.*).

Subsequent to the expansion, appellant considered several new electoral plans which would take into account the newly added population and territory. The first proposal provided for the addition of an eighth council member and retained the at-large system (the "7-0-1" plan) (J.S. App. 24a). This proposal was enacted by ordinance in January 1978, over minority opposition (*id.* at 23a-24a).

The city submitted the 7-0-1 plan to the Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c (J.S. App. 41a-42a). The Attorney General interposed a timely objection to the plan accompanying the expansion because it did not sufficiently minimize the dilution of black voting strength caused by the consolidation (J.S. App. 42a). The Attorney General offered, however, to reconsider his objection should the city change its

plan to elect the council members from "fairly-drawn single-member districts" (*ibid.*).[2]

On February 5, 1980, the city requested the Attorney General to reconsider his earlier objection to the 7-0-1 plan (J.S. App. 42a). It also requested preclearance of the annexation of Sabine Pass and a new election plan which enlarged the city council to nine members, elected at-large by majority vote (the "8-0-1" plan) (J.S. App. 26a, 42a).[3] The Attorney General denied the request to reconsider his 1978 objection and objected to the new 8-0-1 plan, in conjunction with the consolidation into the new city of Pear Ridge and Lakeview, since the city had not adopted single-member districts and the annexation of Sabine Pass "exacerbated the dilution of minority voting strength caused by the earlier consolidation" (J.S. App. 43a).[4] The city on March 12, 1980, filed its complaint in the instant suit in the United States District Court for the District of Columbia, seeking preclearance of the 8-0-1 plan (*ibid.*).

During the pendency of the suit, the city continued to consider alternative election plans. The Community Relations Service of the United States Depart-

---

[2] The city's attempt to implement the voting changes adopted in conjunction with the consolidation, while the request for preclearance was pending, was challenged by black voters. A three-judge court in Texas enjoined implementation, *Mosely* v. *Sadler*, No. B-78-69-CA (E.D. Texas Mar. 27, 1979) (J.S. App. 42a).

[3] The addition of voters resulting from the consolidation and annexation has not previously been precleared, but is at issue in this suit involving preclearance of the voting plans.

[4] Residency districts for the at-large seats were drawn so as to create two predominantly black districts, with a third projected to become majority black by 1984 or 1985 (J.S. App. 26a).

ment of Justice was invited to mediate a dispute between factions in the city divided along racial lines regarding the appropriate scheme for electing Council members (*id.* at 28a-29a).

A new plan emerged from these negotiations, which was approved by the white majority and rejected by the black minority. This proposal was for a nine-member council with the mayor elected at-large, four members elected from single-member districts, and four members to be elected at-large, but with district residency requirements (the "4-4-1" plan) (J.S. App. 29a-30a).

By court order, appellant was allowed to place the 4-4-1 plan on a ballot in a special referendum election. But the vote was for the "*sole* and *limited* purpose of permitting * * * submission" of the amendment to the district court in which the city's declaratory judgment action concerning the 8-0-1 plan was then pending, *United States* v. *City of Port Arthur*, No. B-80-216-CA (E.D. Tex. July 24, 1980) (emphasis in original) (J.S. App. 43a-44a). Voting in the referendum election split along racial lines, and the 4-4-1 plan was approved by a majority of the voters (J.S. App. 32a) Accordingly, on September 15, 1980, the city moved to amend its complaint before the district court to seek a declaratory judgment that the 4-4-1 plan did not have the purpose and will not have effect of denying or abridging the right to vote on account of race or color (J.S. App. 44a).

2. The district court denied the request for a declaratory judgment both because it concluded that the development of the plans was "infected by a discriminatory purpose" and because the city "failed to demonstrate that the implementation of these * * * voting changes can be accomplished without the effect of denying or abridging the right to vote on account

of race, color, or language-affiliation." (J.S. App. 73a).[5] Specifically, the court, relying on the decisions in *City of Petersburg* v. *United States*, 354 F. Supp. 1021 (D.D.C. 1972), aff'd, 410 U.S. 962 (1973) and *City of Richmond* v. *United States*, 422 U.S. 358 (1975), concluded that the expansion of Port Arthur, although undertaken without discriminatory purpose, nonetheless "significantly altered the racial balance in the City" (J.S. App. 52a). The court also found that, in light of the significant polarization of the vote along racial lines, none of the electoral plans proposed by the city afforded black voters "the requisite opportunity to achieve representation commensurate with their voting strength in the enlarged community" (J.S. App. 54a).[6] Thus, it refused to grant preclearance of the territorial expansions unless appellant devised a new electoral plan that would minimize effectively the dilution of the voting power of the black minority (J.S. App. 73a-74a).

3. After negotiations, appellant and the United States jointly submitted an amended plan to the court (J.S. App. 85a-87a). The plan provided for six single-member district seats and three at-large seats (the "4-2-3" plan) (J.S. App. 79a). The plan made use of the four existing residency districts, in two of which blacks constituted a majority. It then combined the two majority black districts into a fifth single-member district and the two remaining districts into a sixth district (*ibid.*). Two of the three

---

[5] The city did not appeal from these determinations and it does not contest them in this appeal.

[6] The court also concluded that the 6-0-1 plan, which preceded the expansion, would also fail to insure the black community an opportunity to obtain representation commensurate with its voting strength in the enlarged community (J.S. App. 62a-63a).

at-large members would then be required to reside in districts five and six, and the mayor would be elected at-large with no residence requirement (*ibid.*). All elections would be by majority vote (*ibid.*). The plan was designed to allow black voters a reasonable opportunity to elect candidates of their choice in three of the single-member districts (33% of the council) which compared favorably with the 35% black voting-age population in the enlarged city (J.S. App. 85a).

In the joint submission, the United States expressed reservations about the continued use of the at-large feature and about the majority vote requirement (J.S. App. 86a-87a). Nonetheless, the United States concluded that the ability of the black community to influence the outcome of three single-member seats lessened the discriminatory impact of the at-large feature (J.S. App. 86a). The United States also expressed a preference for a plurality win provision for the at-large seats in order to increase the possibility of minority influence in those elections, but concluded that the city's refusal to incorporate such a provision did not justify denying preclearance (J.S. App. 87a).

The district court, with one judge dissenting, ordered the plan approved "on the condition that the two non-mayoral, at-large representatives be elected by plurality vote" (J.S. App. 80a).

ARGUMENT

Because the United States joined in the submission of the 4-2-3 plan to the district court, our position in this appeal is somewhat awkward.* We do not believe, however, that the decision of the district court raises a question of sufficient substance to warrant plenary review by this Court or that the decision is so plainly wrong that summary reversal is appropriate.

*/ Although we believe that the district court could properly have approved the plan as submitted by the City and the United States, we do not believe that course was required.

The issue raised by the appellant is hardly a matter of national importance. The practice of conditioning preclearance under Section 5 upon modification of an electoral plan was clearly established in *City of Petersburg* v. *United States*, 354 F. Supp. 1021 (D.D.C. 1972), aff'd, 410 U.S. 962 (1973). See also *City of Richmond* v. *United States*, 422 U.S. 358, 370 (1975). Appellant does not challenge the authority of the district court to order conditional approval. All that is at issue is whether the plan submitted sufficiently recognized the minority's political strength in the enlarged community of the City of Port Arthur. See *City of Richmond* v. *United States*, *supra*, 422 U.S. at 378; *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U.S. 144, 160 (1977).

Appellant argues (J.S. 7-10) that the district court's decision violates a "bright line" test adopted by this Court for determining when an electoral plan is consistent with Section 5. There is, however, no bright line for determining what is reasonably necessary to protect minority voting strength in any given case.

There are numerous factors in territorial expansion cases, such as this one, that complicate their resolution and make pat solutions unachievable. For instance, in this case the voting age population for blacks could only be estimated based on projections (J.S. App. 54a). In addition, the determination as to the likelihood that blacks will elect three council members is not free of doubt since the 62.8% black population in District 4 raises at least some question as to the ability of blacks to prevail in elections in that district (J.S. App. 58a n.160).[7] Also, the in-

[7] Voting age population would be lower than 62.8% and registered black voters would be a still lower percentage. These problems combined with racial bloc voting tend to

clusion of the newly acquired Sabine Pass area into the predominantly black District 5, the residency district for one of the at-large seats, casts doubt on whether candidates nominated from that district will in the future represent and be responsive to the concerns of the black residents of that district (J.S. App. 59a).

Such factors, which were of concern to the district court when it reviewed the earlier plans, generally render it difficult to decide with certainty whether a particular plan satisfies Section 5. Certainly, the presence of these imponderables makes it inappropriate to rely solely on an oversimplified mathematical determination of the percentage of officials that minorities can reasonably anticipate electing compared with the minority's percentage of the voting age population. As the district court stated in *City of Rome* v. *United States*, 472 F. Supp. 221, 248 (D.D.C. 1979), aff'd, 446 U.S. 156 (1980), "adequacy of representation is not measured solely by the black community's ability to elect its first-choice candidate." Instead, what is required is a measure of judgment by the court[8] based on all of the facts. This is particularly true in a case such as this where the district court had recently passed

---

make it more difficult for blacks to prevail in elections without very substantial majorities (J.S. App. 58a n.160).

[8] Appellant also argues (J.S. 11-14) that the district court failed to accord sufficient weight to the judgment of the Attorney General that the jointly submitted plan satisfied the requirements of Section 5. This is not an appropriate case for deciding this issue. In joining the submission of the plan, the government made clear that it had substantial reservations about the plan and thus essentially invited the court to review the issue independently.

judgment on two previous plans and therefore was intimately familiar with the specific situation involved.

The decision of the district court, which makes only a minor adjustment in appellant's electoral plan, is designed to provide black voters with the possibility of influencing, not controlling, the election of at-large members in order to prod elected officials to be more responsive to the needs of the black community (J.S. 56a-57a). It therefore assures more effectively that blacks will be adequately represented without in any way being over-represented. We believe that on this record the order of the district court is not contrary to any decision of this Court and creates no issue warranting plenary review by this Court.

CONCLUSION

The order of the district court should be affirmed.

Respectfully submitted.

REX E. LEE
Solicitor General

WM. BRADFORD REYNOLDS
Assistant Attorney General

WALTER W. BARNETT
MARIE E. KLIMESZ
Attorneys

DECEMBER 1981

☆ U. S. GOVERNMENT PRINTING OFFICE: 1981 393747 732

Motion to Dismiss or Affirm 2

RECEIVED
DEC 29 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

NO. 81-708

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

CITY OF PORT ARTHUR, TEXAS, Appellant

vs.

UNITED STATES OF AMERICA

and

ABRAHAM DOUGLAS, ELGIE JENKINS, WALTER MOSLEY, and WILLIE LEWIS, Appellees.

On Appeal from the United States District Court for the District of Columbia

---

MOTION TO AFFIRM

ELIZABETH K. JULIAN
MICHAEL M. DANIEL
East Texas Legal Services
8204 Elmbrook, Suite 200
Dallas, TX. 75247
(214) 638-4276

Counsel of Record for Appellees

NORMAN J. CHACHKIN
Lawyers' Committee for Civil Rights Under Law
733 15th Street, N.W.
Washington, D.C. 20005
(202) 628-6700

ELIZABETH C. PETIT
East Texas Legal Services
P.O. Box 2552
Beaumont, TX. 77704

DON FLOYD
1015 East Gulfway Drive
Port Arthur, TX. 77604

Attorneys for Appellees

QUESTION PRESENTED

Whether it was clearly erroneous for the District Court to conclude that the 4-2-3 plan, as submitted by the City, failed to neutralize to the extent possible the negative impact of the boundary expansions on black political strength in Port Arthur unless modified to provide for the election of the two non-mayoral, at large representatives by plurality vote.

TABLE OF CONTENTS

Motion to Affirm 1

Opinions Below 1

Jurisdiction 1

Statute Involved 1

Statement of the Case 2

Argument 4

Conclusion 7

APPENDIX

Intervenor's Response to Proposed Plan 1a

TABLE OF AUTHORITIES

CASES:

City of Petersburg v. United States, 354 F.Supp. 1021 (D.D.C. 1972), aff'd. without opinion, 410 U.S. 962 (1973) 4, 5, 6

City of Richmond v. United States, 422 US 358 (1975) 3, 4, 5, 6

City of Rome v. United States, 472 F.Supp. 221 (D.D.C. (1979) aff'd, 446 US 156 (1980) 5, 6

STATUTE:

Voting Rights Act of 1965, Section 5, as amended, 42 USC 1973c 1

MOTION TO AFFIRM

Under this Court's Rule 16, the Defendant-Intervenors JENKINS and DOUGLAS move this Court to affirm the July 14, 1981 Order of the District Court below.[1]

Opinions Below

The order of the District Court from which this appeal is taken is not reported. The opinion entered by the three judge district court for the District of Columbia on June 12, 1981 is reported at 517 F.Supp. 987. The Order accompanying that Opinion is presently now unreported.

Jurisdiction

The City of Port Arthur filed this action seeking a declaratory judgment under Section 5 of the Voting Rights Act of 1965, as amended, 42 USC 1973(c). The judgment of the three judge district court was entered on July 14, 1981. The City of Port Arthur filed its notice of appeal on July 21, 1981. The jurisdiction of this Court is invoked under 42 USC 1973(c).

Statute Involved

Section 5 of the Voting Rights Act of 1965, as amended, 42 USC 1973(c), in pertinent part provides:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in Section 1973b(a) [of this title] *** are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with

---

[1] The City maintains that Intervenors JENKINS and DOUGLAS "accepted" the 4-2-3 plan as submitted. The Intervenor's Response makes clear that they were prepared to accept the plan in order to settle the matter so that elections could be held, and did not accept the plan as being in compliance with the Voting Rights Act. App. 2a The Intervenors DOUGLAS and JENKINS support the District Court Order in its entirety. Intervenors MOSELEY and LEWIS maintain that the only acceptable plan is all single member districts.

> respect to voting different from that in force or effect on November 1, 1972 *** such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color . . .

Statement

The facts are set forth at length in the opinion of the District Court, reported at 517 F.Supp. 987. We briefly summarize them here.

In 1977 and 1978, the City of Port Arthur moved to expand its boundaries and its population by the consolidation of the two cities of Pear Ridge and Lakeview and the annexation of the town of Sabine Pass. The effect of these expansions was to significantly alter the racial composition of the City by adding 5,675 whites and 111 blacks to a City which, according to 1980 census had a pre-annexation total population of 54,485, 45.21% of whom were black. J.S. App. 6a. These consolidations and annexations along with a new election plan for the expanded jurisdiction were submitted to the Justice Department for approval. Between December of 1977 and March of 1980 the City sought and was denied approval of two at-large election schemes by the Attorney General. On March 12, 1980 the City filed suit in District Court seeking a declaratory judgment that its expansions and the 8-0-1 voting plan were not discriminatory in purpose or effect.[2] The City of Port Arthur subsequently amended its complaint to seek approval of a 4 single member district, 5 at-large voting plan.[3] The Court

---

[2] The City proposed to elect 8 council members at-large by residency district and the mayor at-large. This plan is referred to in the record as the 8-0-1 plan.

[3] Also known as the 4-4-1 plan, this plan consisted of 4 council members elected by district, 4 elected at-large with residency requirements, and the mayor at-large, all with the majority vote requirement.

permitted four black citizens of Port Arthur to intervene in the action. At trial, the City primarily urged approval of the 4-4-1 plan. Both the 8-0-1 and the 4-4-1 plan were opposed by the United States and the Intervenors.

On June 12, 1981, the three judge district court issued an Order and Memorandum Opinion denying the requested relief and finding that the City of Port Arthur had failed to establish that the expansion of its boundaries, and the implementation of either the proposed election schemes would not have a discriminatory effect. J.S. App. 1a-75a. The Court further found that while the Plaintiff successfully satisfied the "purpose test" of Section 5 by demonstrating the "existence of legitimate reasons for the expansion as of the present time" as set out in City of Richmond v. US, 422 US at 375, they were not successful in meeting their burden of proof with respect to the adoption of the 8-0-1 and the 4-4-1 plan. The Court concluded that not only had the City failed to prove the lack of illicit discriminatory purpose, but that the "vast preponderance of the evidence" indicated that the two plans were in fact enacted with such invidious purpose. J.S. App. 70a.

The District Court retained jurisdiction of the matter and directed the City to devise within fifteen days an electoral system which satisfied the concerns expressed in its Opinion. J.S. App. 78a. In response, the City of Port Arthur proposed on June 29, 1981 that it hold a charter change election for the adoption of a new 4-2-3 voting plan.[4]

---

[4] This 4-2-3 plan consists of 4 single member districts of approximately equal size, two larger districts made up of a combination of two of the four smaller districts, and three councilmen, including the Mayor, elected at-large, using place and majority vote run-off requirements subsequently the City amended this plan to substitute a residency requirement for the place requirement on the two non-mayoral at-large places.

On July 14, 1981, after hearing oral argument of all counsel, and considering written responses to the joint submission, the Court determined that the proposed plan "insufficiently neutralizes the adverse impact upon minority voting strength which resulted from the expansion of Port Arthur's borders" but indicated that approval of the plan, and the expansions, would be forthcoming if the proposed plan were modified so as to provide for the election of the two non-mayoral at-large representatives by plurality vote. On July 21, 1981, in a response filed with the District Court, the City declined the Court's offer to approve the plan with the proposed modification, and indicated its intention to appeal the July 14, 1981 decision to the Supreme Court. The Order appealed from, and the only issue brought to this Court is that contained in the July 14, 1981 Order. No appeal was taken from the June 12, 1981 Order and Opinion.

Argument

It is manifest that the questions on which the decision of this cause depends are so insubstantial as not to justify full briefing and oral argument.

The issue before the Court is a narrow one. In spite of Appellant's efforts to create four substantial questions out of the July 14th order, in fact only one exists: whether or not it was clearly erroneous for the District Court to conclude that the 4-2-3 plan submitted to it for approval did not neutralize, to the extent possible, the negative impact on the black political strength in the City of Port Arthur so as to permit approval of the expansions as well as the election plan, as required by City of Richmond v. US, 422 US 358 (1975), and City of Petersburg v. US, 354 F.Supp. 1021 (D.D.C. 1972), aff'd without opinion, 410 US 962 (1973). The Court's rejection of the use of the majority

vote requirement for the two at-large places was entirely within the equitable powers of the Court in dealing with challenges under the Voting Rights Act to consolidations and annexations, as consistently recognized by this Court. City of Rome v. US, 446 US 156 (1980); City of Petersburg, supra; City of Richmond, supra. The Court disapproved the use of a combination of voting procedures which it found, in Port Arthur, had been used to intentionally foreclose effective access to the political process by the black community. In doing so, the Court adhered closely to the standards and reasoning of Richmond and Petersburg, departing from it only in favor of granting the City more leeway in the adoption of an ameliorative plan.[5]

The City's appeal focuses only on the use of the particular combination of voting procedures in two of nine council places. The issue is political access to those places by the black community in Port Arthur. The Court determined that, given all of the facts and conclusions of its June 12, 1981 Order, from which no appeal was taken, the use of at-large features could only be allowed if coupled with the plurality vote requirement, rather than the place, majority/run-off requirements which tend to promote head on contests between blacks and whites. The device at issue, at large voting, residency districts, and majority voting requirements have all been recognized by this Court as voting procedures that can operate as a deterrent to effective exercise of the franchise by black citizens. City of Rome, supra, at 144-145. The District

[5] The ameliorative plans in City of Richmond and City of Petersburg called for all council members to be elected from fairly drawn wards or districts. That was the remedy urged at trial by Intervenors and the United States.

Court specifically found that, in the racially polarized voting environment of Port Arthur, the use of the majority vote and residency requirements were exacerbating factors in devaluing the black vote when coupled with the at-large feature. J.S. App. 56a. The District Court's determination that the combination of these procedures implemented in the new expanded city would in fact have such an effect was not clearly erroneous, and in fact was amply supported by the record evidence.

This case, much as Petersburg, to which it closely relates, was correctly decided on the facts. It creates no "new and unprecedented requirements under the Voting Rights Act." J.S. App. 6. Quite the contrary, it relies upon the principles and requirements of City of Richmond, City of Petersburg, and City of Rome and applies them conservatively to the special facts of the case before it. In doing so, the Court made every effort to accomodate legitimate non-discriminatory city desires regarding the election plan, while assuring the protections which Congress meant to afford by the Voting Rights Act. A reading of the June 12, 1981 Opinion makes this clear. The Court had a massive record before it on which to make its findings. Those findings, and the Court's conclusions in that Opinion and Order have gone unchallenged by the City. The City subsequently submitted the 4-2-3 plan, offering no additional testimony. The Court, in conditioning approval of the City's 4-2-3 plan as it did, simply exercised well recognized equity powers to deal with the unique situations of city expansions under the Voting Rights Act, and its actions should be affirmed without further argument.

The City makes much of the fact that the Court below did not agree with the Department of Justice's reluctant acceptance of the new plan. While the Justice Department position is obviously

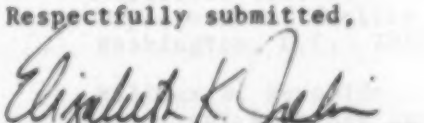
entitled to weight, there is no indication that such was not accorded. Once the political subdivision choose to invoke the jurisdiction of the District Court under Section 5, however, the ultimate decision remains with the District Court as to the discriminatory effect and purpose of a given voting change.

In this case, the City's argument that the Attorney General's position should have been followed is even less persuasive. The Attorney General filed what could hardly be called an "unequivocal" statement of support for the proposed plan. J.S. App. 85a. He stressed his concern with the very problems that the Court ultimately decided were substantial. The Court obviously gave the United States position consideration, but was unable to reach the same conclusion. The Attorney General himself believes that decision not clearly erroneous, and urges the Court to affirm the decision.

Conclusion

The Order of the District Court should be affirmed.

Respectfully submitted,



ELIZABETH K. JULIAN
MICHAEL M. DANIEL
East Texas Legal Services
8204 Elmbrook, Suite 200
Dallas, TX. 75247
Ph: (214) 638-4276

NORMAN J. CHACHKIN
Lawyers' Committee for Civil
Rights Under Law
733 - 15th Street, N.W.
Suite 520
Washington, D.C. 20005

CERTIFICATE OF SERVICE

I, ELIZABETH K. JULIAN, a member of the Bar of this Court representing the Defendant-Intervenors, on whose behalf this service is made, do hereby certify that a typewritten copy of Intervenors' Motion to Affirm was served on each party separately represented in this matter by depositing this document in a United States Post Office with first class postage, pre-paid, addressed to counsel of record at his post office address on Monday, December 28, 1981, as required by Rule 28.3 and 28.4(a) of the Rules of the Supreme Court of the United States. A list of the names and addresses of those parties so served is as follows:

Elizabeth K. Julian
ELIZABETH K. JULIAN

Robert Q. Keith
Mehaffy, Weber, Keith & Gonsoulin
1400 San Jacinto Building
Beaumont, TX. 77701

George Wikoff
City of Port Arthur
P.O. Box 1089
Port Arthur, TX. 77640

Charles F. C. Ruff, Esq.
United States Attorney
for the District of Columbia
500 Indiana Avenue, N.W.
Room 5200
Washington, D.C. 20001

James Douglas Welch
Wald, Harkrader & Ross
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

Honorable Rex Lee
Solicitor General
Department of Justice
Washington, D.C. 20530

William B. Reynolds
Assistant Attorney General
Gerald W. Jones
Robert S. Berman
Civil Rights Division
Department of Justice
550 11th St., N.W. Room 943
Washington, D.C. 20530

RECEIVED
OCT 9 1981
JAMES F. DAVEY, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITY OF PORT ARTHUR, TEXAS I
Plaintiff I
vs. I Civil Action NO. 80-0648
I
UNITED STATES OF AMERICA, et al I
Defendants I

INTERVENORS' RESPONSE TO PROPOSED PLAN

Intervenors offer the following response to the proposed 4-2-3 election plan, as amended to include residency districts for two of the three at large positions.

The new plan proposed by the City substantially insures that the black community will be able to elect three out of nine persons sitting on the Port Arthur City Council. The post annexation black population is 40.5%, and the Court has projected that the voting age population is approximately 35%. The City, apparently a recent convert to proportional representation, maintains that an electoral plan which affords proportional representation to minorities based upon their percentage of the voting age population requires no further inquiry under the Voting Rights Act. The response of the Department of Justice suggests that they would agree with this analysis. Certainly Intervenors consider the new plan a substantial improvement over the City's previous efforts. However, there likewise can be no dispute, given the Court's findings, that the three at-large positions, when coupled with majority/run off requirements, are totally inaccessible to the black community. Therefore, while the plan does approach affording blacks representation reasonably equivalent to their voting strength in the at-large community, it does not appear to "neutralize to the extent possible" the adverse affect of the expansions upon the political participation of black voters. Substituting a plurality requirement for three or even

two of the at-large positions in the plan would allow the City to exercise all legitimate political and governmental perogatives while affording the black population an opportunity to influence the election of the three at-large council people. Further, Intervenors do not agree with the analysis of the Justice Department that a single member district plan could not be drawn that would afford more than three seats to the black community. These problems, coupled with the long range potential of this plan to "freeze" minority participation at a level which would not be substantially affected even with an increasing black population lead Intervenors MOSLEY and LEWIS to object to the plan.

Intervenors DOUGLAS and JENKINS, share the reservations outlined above. However, in light of the Justice Department's acquiescense in the proposed plan and the lengthy delay in the holding of elections in Port Arthur occasioned by the City's resistance to all efforts to obtain fair representation for minority voters in Port Arthur, Intervenors are prepared to accept this plan as a necessary compromise in order to insure that a new City Council can be elected without further delay.

Respectfully submitted,

LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW
733 15th Street, N.W.
Washington, D.C. 20005
(202) 628-6700

BY: Norman Chachkin (EAQ)
NORMAN CHACKIN

EAST TEXAS LEGAL SERVICES, INC.

BY: Elizabeth K. Julian
ELIZABETH K. JULIAN
MICHAEL M. DANIEL
Attorneys at Law
8204 Elmbrook, Suite 200
Dallas, TX. 75247
(214) 638-4276

ELIZABETH C. PETIT
P.O. Box 2552
Beaumont, TX. 77704

DON FLOYD, EAQ.
1015 East Gulfway Drive
Port Arthur, TX. 77604
Attorney for Intervenors,
MOSLEY and LEWIS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Intervenor's Response to Proposed Plan was mailed to counsel for all parties, this the 9th day of July, 1981.

ELIZABETH K. JULIAN
MICHAEL M. DANIEL

James Douglas Welch
WALD, HARKRADER & ROSS
1300 19th Street, N.W.
Washington, D.C. 20036

George Wikoff
City Attorney of Port Arthur
P.O. Box 1089
Port Arthur, TX. 77640

Robert Q. Keith
1400 San Jacinto Bldg.
Beaumont, TX. 77701

Charles F. C. Ruff, Esq.
United States Attorney
500 Indiana Avenue, N.W.
Room 5200
Washington, D.C. 20001

Drew S. Days, III
Gerald W. Jones
Paul F. Hancock
Robert S. Berman
Attorneys, Civil Rights Division
Department of Justice
10th & Pennsylvania, N.W.
Washington, D.C. 20530

Elizabeth Petit
P.O. Box 2552
Beaumont, TX. 77704

Don Floyd
Attorney at Law
1015 East Gulfway Drive
Port Arthur, TX. 77604

RECEIVED
DEC 29 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 81-708

CITY OF PORT ARTHUR, TEXAS,

Appellant

versus

UNITED STATES OF AMERICA

and

ABRAHAM DOUGLAS, ELGIE JENKINS, WALTER MOSLEY, and WILLIE LEWIS,

Appellees

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

COME NOW Appellees JENKINS and DOUGLAS in the above captioned matter and move this Ccurt for an Order allowing them leave to proceed in forma pauperis pursuant to 28 USC 1915 and Rule 53, Rules of the Supreme Court. As basis for such Order, Appellees would show the Court as follows:

I

Appellees are persons whose income is so small that they cannot individually nor jointly pay the costs attendant to proceedings before this Court nor give security therefor.

II

Specifically, Appelees cannot afford nor give security for the cost of printing requirements otherwise required by the rules of this Court.

III

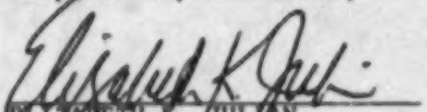
Appellees are involuntary parties in this proceeding before the Court and will in due course file their Motion to Affirm the Order

of the United States District Court for the District of Columbia, from which this appeal is taken. Their position is based on sound legal principles and is taken in good faith.

Appellees intervene in the instant action on the side of the Defendant, and therefore have to date been subject to no costs which required them to seek to proceed in forma pauperis.

WHEREFORE, Premises Considered, Appellees respectfully pray that this Court consider the foregoing and enter an Order granting them leave to proceed before the Court in forma pauperis pursuant to 28 USC 1915 and Rule 53, Rules of the Supreme Court.

Respectfully submitted,



ELIZABETH K. OULMAN
MICHAEL M. DANIEL
EAST TEXAS LEGAL SERVICES
8204 Elmbrook, Suite 200
Dallas, TX. 75247
Ph: (214) 638-4276

Attorneys for Appellees

IN THE

SUPREME COURT OF THE UNITED STATES

No. 81-708

CITY OF PORT ARTHUR, TEXAS,

Appellant

versus

UNITED STATES OF AMERICA

and

ABRAHAM DOUGLAS, ELGIE JENKINS, WALTER MOSLEY, and WILLIE LEWIS,

Appellees

AFFIDAVIT

STATE OF TEXAS)
) KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF JEFFERSON)

BEFORE ME the undersigned authority came this day Elgie Jenkins, and having first been duly sworn and deposed did say that:

I am Elgie Jenkins, one of the Defendant-Intervenors in the action below, appellees before this Court. I have been advised by my attorneys that Plaintiff below, Appellants herein, are seeking from this Court review by virtue of a Notice of Appeal. I am further advised by my attorneys of the costs of proceeding before this Court and particularly of its printing requirements.

I am a person of limited financial means. I own no real property other than my home and personal property of extremely limited value. I have no savings account, bonds, stocks or other property sufficient to afford the costs of this proceeding, should printing be required.

Mr. Douglas and myself have been represented in this proceeding by lawyers from East Texas Legal Services, a non profit organization which furnishes lawyers to people who are unable to pay for legal counsel. Defendant-Intervenors did not seek leave to proceed in forma pauperis in the court below.

I have discussed the costs of this proceeding with my co-appellees and represent to the Court that we have insufficient funds and/or property to pay the costs of this proceeding or furnish security therefor.

Appellees will request this Court to affirm the decision of the lower Court and do so in good faith. I respectfully request of this Court that it allow Appellees to proceed in forma pauperis for the foregoing reasons.

Elgie Jenkins
ELGIE JENKINS

SWORN TO AND SUBSCRIBED BEFORE ME, this the 5th day of November, 1981, to certify which witness my hand and seal of office.

Nellie M. Battin
NOTARY PUBLIC in and for
Jefferson County, Texas
Nellie M. BATTIN

Appellant's Reply Brief

Office - Supreme Court, U.S.
FILED
JAN 8 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-708

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

CITY OF PORT ARTHUR, TEXAS, *Appellant,*

v.

UNITED STATES OF AMERICA

and

ABRAHAM DOUGLAS, ELGIE JENKINS, WALTER MOSLEY, AND WILLIE LEWIS, *Appellees.*

On Appeal from the United States District Court for the District of Columbia

---

APPELLANT'S REPLY BRIEF IN OPPOSITION TO MOTIONS TO AFFIRM

ROBERT Q. KEITH
MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Building
Beaumont, Texas 77701
(713) 835-5011

Counsel of Record for Appellant

JAMES DOUGLAS WELCH
POPHAM, HAIK, SCHNOBRICH, KAUFMAN & DOTY
2000 L Street, N.W. - Suite 802
Washington, DC 20036
(202) 887-5154

GEORGE WIKOFF
CITY ATTORNEY OF PORT ARTHUR
P.O. Box 1089
Port Arthur, Texas 77640

Attorneys for Appellant

January 8, 1982

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

TABLE OF AUTHORITIES

CASES: Page

City of Richmond v. *United States*, 422 U.S. 358 (1975) ..... *passim*

City of Rome v. *United States*, 446 U.S. 156 (1980) 2

Mosley v. *Sadler*, 469 F.Supp. 563 (E.D. Tex. 1979) ... 6

United Jewish Organizations of Williamsburgh, Inc. v. *Carey*, 430 U.S. 144 (1977) 2

United States v. *City of Port Arthur*, No. B-80-216-CA (E.D. Tex. July 24, 1980) 1

STATUTE:

Voting Rights Act of 1965, § 5, *as amended*, 42 U.S.C. § 1973c ..... *passim*

No. 81-708

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

CITY OF PORT ARTHUR, TEXAS, *Appellant*,

v.

UNITED STATES OF AMERICA

and

ABRAHAM DOUGLAS, ELGIE JENKINS, WALTER MOSLEY, AND WILLIE LEWIS, *Appellees*.

On Appeal from the United States District Court for the District of Columbia

APPELLANT'S REPLY BRIEF IN OPPOSITION TO MOTIONS TO AFFIRM

STATEMENT

1. On November 3, 1981, and December 1, 1981, interim city council elections were held in the City of Port Arthur. These elections employed the six single-member districts of the 4-2-3 plan now before this Court.[1] As predicted in the Joint Submission to the

[1] The interim elections were held pursuant to orders of the United States District Court for the Eastern District of Texas in *United States* v. *City of Port Arthur* (No. B-80-216-CA, entered August 3, 1981) and of the district court below (entered August 8, 1981). The at-large seats were not part of the election since they are at issue here. All parties stipulated to the procedure used.

district court, three black councilmen were chosen from the districts with substantial black majorities (nos. 1, 4 and 5) (J.S. 85a).[2]

These election results eliminate all doubt that the 4-2-3 plan, which was rejected without opinion by the divided court below, satisfies the test announced by this Court in *City of Richmond* for annexation cases. The plan produced, in an actual election, three black single-member district councilmen. Given the plan's nine council positions (including the mayor) and the expanded City's 35% black voting age population, control by blacks of 33% of the seats equates to "[black] representation reasonably equivalent to their political strength in the enlarged community." *City of Richmond* v. *United States*, 422 U.S. 358, 370-371 (1975). *Accord, City of Rome* v. *United States*, 446 U.S. 156, 187 (1980); *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U.S. 144, 160 (1977).

The United States and Intervenors make no reference to the results of the election (of which they were aware), choosing instead to rely on conclusory generalities. Their motions amount only to vague and unspecific assertions that the case is not worth the Court's time, and never come to grips with the important issues raised in the Jurisdictional Statement. Significantly, neither appellee argues that the 4-2-3 plan fails to meet

---

[2] Certified copies of the City Council ordinances canvassing the returns of these elections have been lodged with the Court's Clerk. For the convenience of the Court and the parties, these ordinances are reproduced as Appendix A hereto. An affidavit of the City Secretary, showing a racial breakdown of the candidates for each position, is attached as Appendix B (the original has been lodged with the Court's Clerk).

the *Richmond* test, but neither cites any authority establishing that a district court has the power, where that standard has been met, to add an additional condition for preclearance. Indeed, there is no such authority, and this Court has held precisely contrary to the position taken by the United States and Intervenors: "As long as the [election system] fairly reflects the strength of the Negro community as it exists after the annexation, we *cannot* hold . . . that such an annexation is nevertheless barred by § 5." *City of Richmond* v. *United States*, 422 U.S. 358, 371 (1971) (emphasis added). Thus, the divided district court's order, entered without an explanatory opinion, improperly imposes requirements beyond the Voting Rights Act as construed by this Court.

2. The government concedes that it would have been proper for the district court to adopt the 4-2-3 proposal submitted jointly with the City (United States' Motion to Affirm (hereafter "Gov't M.A.") at 7n.). Nevertheless it urges summary affirmance of a decision which rejects that plan. In doing so, the government disregards the concept which this Court has repeatedly said is the core of voting rights law—the familiar *City of Richmond* standard quoted above.

The *Richmond* test is a fair and practical one which recognizes that access to the political process boils down to one's ability to influence the election of officials in proportion to one's strength in the community. A hallmark of the standard has been remarkable clarity which puts jurisdictions covered by the Act on notice as to how governing bodies in expanded communities must be structured. But because Port Arthur's plan has been proven at the polls to meet the *Richmond* test, the United States resorts to belittling *Richmond* as

"pat" and "oversimplified" (Gov't. M.A. 8,9). It suggests in its place an amorphous test described as "judgment . . . based on all the facts" (Gov't. M.A. 9). Use of this rule would be totally unworkable as it gives no guidance whatever to a jurisdiction contemplating expansion. Not surprisingly, the United States cites not a single case in which the clear *Richmond* standard has even been questioned, much less altered to the hodgepodge rule it proposes.

The true weakness of the government's motion is epitomized by its uninformed factual analysis of the workings of the 4-2-3 plan. It argues that the proposed plan is flawed because—as is true in most cases—it was based on estimations of black voting strength using the last available census figures (figures which were adopted by the district court (J.S. 30a)). Hence, it is said, blacks' ability under the plan to elect "three council members is not free of doubt" because the strength of the black majority in District 4 raises a question whether they can "prevail in elections in that district" (Gov't. M.A. 8-9). Yet the results of the interim elections show that nothing could be farther from the truth. In fact, District 4 fielded two blacks and three whites in the council race, and since none received a majority, there was a run-off. None of the whites garnered enough votes even to make the run-off, which was between the two black candidates. Black councilmen were elected without a run-off in Districts 1 and 5 (the winner of the District 5 seat was one of the intervenors here, Walter Mosley). (See Appendix B, p. 20a).

Regarding the at-large candidate who must reside in the residency district coextensive with District 5, the

government takes the absurd position that the inclusion of 472 whites from the Sabine Pass area in the total district population of 30,200, of whom 70.83% (or 21,391) are black, casts doubt on whether that representative will be responsive to black concerns (Gov't M.A. 9). Counting the Sabine Pass whites in this district altered the black majority by a mere 1.09% (from 71.92% to 70.83%), hardly enough to cause a shift in responsiveness on the part of the district's council representative.

Furthermore, the results of the single-member District 5 race demonstrate that blacks in this residency district have in place nominating machinery which has and will in the future produce viable council candidates. And, under interim election procedures proposed by the City and approved by the district court, this residency district is now represented by a black who plainly will be a substantial force in any contest for this position in the future. Finally, in urging that the district court adopt the plan described in the Joint Submission, the Civil Rights Division lawyers (the same team which has handled this case since 1978 and which has become intimately familiar with voting in Port Arthur) expressed their belief that blacks in this district would have an important impact on the outcome of the race for this seat (J.S. 87a).

Despite the government's and intervenors' efforts to ignore them, the interim elections make it clear beyond any doubt that the 4-2-3 plan meets this Court's § 5 annexation standard. A summary affirmance here would place this Court's stamp of approval on the district court's requirement that Port Arthur do more than satisfy the *Richmond* test. Neither motion to affirm provides any significant legal or factual analysis

which would justify abandoning that standard in this case without a plenary review.[3]

3. The plan advanced by the City reflects a careful balance of the rights of all its citizens. Blacks will have outright control of 3 of the 9 seats, giving them influence in proportion to their numbers. They will also have significant influence over a fourth seat elected from a residency district which is 70% black. In trying to achieve fairness for all people—black and white—the plan uses a majority vote requirement for the two at-large seats as a means of balancing access to them.

Altering this to a plurality-win system significantly changes the nature of the plan by tipping it further toward black representation, when that group is otherwise fully compensated by the plan's single-member features. The district court's decision should be reviewed because it imposes an over-representation requirement not contemplated by the Act or by this Court's rulings. *City of Richmond* v. *United States*, 422 U.S. 358, 371 (1975).

---

[3] Intervenors note that the City's notice of appeal refers to the order of July 14, 1981, as distinct from the opinion and order of June 12, 1981. The district court's findings of June 12, however, were entered in the context of a voting plan vastly different from the present 4-2-3 plan embodying six single-member districts, which is the only one at issue here. Moreover, even if it could be said that those findings are germane, they are fundamentally at odds with the conclusions of the district court in *Mosley* v. *Sadler*, 469 F. Supp. 563 (E.D. Tex. 1979), a constitutional challenge to an at-large plan the City has since abandoned. Significantly, in *Mosley* the court made "extensive findings of fact concerning racial polarization, black participation in the political process, and municipal responsiveness to black needs in the areas of employment and services" (J.S. 33a) which contradict in large part the opinion below in this case. The *Mosley* court held that the at-large plan there at issue was neither discriminatory in its intent nor its effect. This split between the district courts which have studied voting in Port Arthur is yet another reason to grant plenary review.

4. From the onset of annexation litigation, this Court has hewed to the *City of Richmond* test in an unbroken line of decisions construing § 5. In this case, a city with a 35% black voting age population presents the Court with a plan which has been proven to afford blacks control of at least 33% of the council positions. The plan, which was carefully evaluated and agreed to by the United States, was rejected by a divided district court without opinion. A summary affirmance here will muddy the otherwise clear precedent in this important area of the law and deprive affected jurisdictions of an opinion explaining the nature and extent of the Court's obvious and substantial departure from its earlier decisions.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted,

ROBERT Q. KEITH
MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Building
Beaumont, Texas 77701
(713) 835-5011

Counsel of Record for Appellant

JAMES DOUGLAS WELCH
POPHAM, HAIK, SCHNOBRICH,
KAUFMAN & DOTY
2000 L Street, N.W. - Suite 802
Washington, DC 20036
(202) 887-5154

GEORGE WIKOFF
CITY ATTORNEY OF PORT ARTHUR
P.O. Box 1089
Port Arthur, Texas 77640

Attorneys for Appellant

January 8, 1982

Appendix

CERTIFICATION

THE STATE OF TEXAS
COUNTY OF JEFFERSON

I, Carolyn Dixon, City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance 81-86 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 5th day of January, A.D., 1982.

/s/ CAROLYN DIXON
City Secretary of the City
of Port Arthur, Texas

(SEAL)

ORDINANCE NO. 81-86

An Ordinance Canvassing the Returns of a Special Election Held in the City of Port Arthur on Tuesday the 3rd Day of November A.D., 1981, for the Purpose of Electing a Mayor and Six Councilmen; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur, the provisions of the Texas Election Code, and Order of the United States District Court for the Eastern District of Texas, dated August 3, 1981, a Special Interim Election was held on Tuesday, the 3rd day of November, A.D., 1981, in the twenty-one (21) Precincts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said Election was held for the purposes of allowing the qualified voters to elect a Mayor and one City Councilman from Districts numbered One, Two, Three, Four, Five and Six; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said Special Interim Election after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said election for the respective candidates the number of votes shown by the following tabulated statements, to-wit:

MAYOR

Precincts	32	33	34	45	46	47&51	48	49
Bernis W. Sadler	15	402	39	396	775	587	379	429
Edna Barbour	1	29	12	15	12	12	16	13
Robert "Whitey" Carr	2	18	6	16	12	8	8	12
Billy Joe Murphy	4	66	17	19	32	16	28	8
Joseph J. Gauthier	134	248	92	117	138	131	86	98
Frederick Johnson	4	155	466	23	43	48	24	49
Ronnie Thompson	0	0	0	0	2	0	0	0

Precincts	50	52&53	54	55	57	58	59	70
Bernis W. Sadler	367	105	39	21	33	78	47	381
Edna Barbour	16	5	4	5	6	15	15	12
Robert "Whitey" Carr	8	12	3	11	4	11	15	3
Billy Joe Murphy	12	14	2	14	9	19	17	14
Joseph J. Gauthier	108	63	31	41	29	80	70	66
Frederick Johnson	232	330	137	220	150	467	561	23
Ronnie Thompson	0	0	0	0	0	0	0	0

Precincts	71	76	81	Abs.	Total
Bernis W. Sadler	115	327	51	1065	5651
Edna Barbour	6	5	8	136	250
Robert "Whitey" Carr	6	5	8	46	214
Billy Joe Murphy	23	13	7	32	366
Joseph J. Gauthier	35	54	65	93	1779
Frederick Johnson	1	33	249	136	3351
Ronnie Thompson	0	0	0	0	2

COUNCILMAN DISTRICT 1

Precincts	32	52&53	54	55	57	58	Abs.	Total
Earl Helmick	26	58	15	6	6	21	35	167
Arthur Craft	105	200	101	130	109	361	116	1122
Willie Lewis, Jr.	5	227	95	148	92	297	43	907

COUNCILMAN DISTRICT 2

Precincts	48	49	50	71	76	Abs.	Total
Pat Branson	188	217	346	62	148	68	1029
Maurice Conerly	322	368	328	113	256	354	1741

COUNCILMAN DISTRICT 3

Precincts	45	46	47&51	70	Abs.	Total
Mark Woodall	85	145	90	44	129	493
Vernon D. Castille	161	261	207	217	147	993
Charles L. Rhodes, Jr.	161	379	323	109	150	1122
J. C. Schmidt	166	143	104	110	60	583

COUNCILMAN DISTRICT 4

Precincts	33	34	59	81	Abs.	Total
Terry Blevins	82	2	7	2	9	102
Ronald Spooner	148	408	372	170	73	1171
Sib Greer	450	10	27	19	75	581
Aubrey Steve Felder	126	14	10	12	9	171
George W. Lacey	72	169	252	139	68	700

COUNCILMAN DISTRICT 5

Precincts	32	33	34	52&53	54	55	57	58	59
Walter Mosely	23	249	450	263	114	182	119	376	428
James Green	18	112	57	95	49	51	48	133	198
Cherry L. Ebeling	12	172	3	40	15	5	4	2	3
Ike Linden	82	269	119	101	38	58	45	140	75

Precincts	81	Abs.	Total
Walter Mosely	199	177	2580
James Green	79	92	932
Cherry L. Ebeling	15	59	330
Ike Linden	66	84	1077

COUNCILMAN DISTRICT 6

Precinct	45	46	47&51	48	49	50	70	71	76	Abs.	Total
Malcolm Clark	404	707	578	369	449	496	359	139	825	736	4944
Mark Woodall	0	0	0	0	0	0	0	0	0	2	2

Section 2. The City Council has determined that said Election was duly called, ordered, and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials.

Section 3. It has been determined that there were more than two candidates for the office of Mayor, and none of them received a majority of all votes cast in said Districts; and further, that Bernis W. Sadler and Frederick Johnson are the two candidates for Mayor who received the highest number of votes. It has also been determined that there were more than two candidates for the office of Councilman in District Number 3, none of them received a majority of all votes cast in said District, and that Charles L. Rhodes, Jr. and Vernon D. Castille are the two candidates receiving the highest number of votes; and it has also been determined that there were more than two candidates for the office of Councilman in District Number 4, none of them received a majority of all votes cast in said District, and that Ronald Spooner and George W. Lacey are the two candidates receiving the highest number of votes. It is therefore ordered, pursuant to the provisions of Article III, Section 8 of the City's Charter, that a special election (runoff election) shall be held on December 1, 1981, for the purpose of selecting a Mayor and a Councilman from Districts Numbered 3 and 4. The names of Bernis W. Sadler and Frederick Johnson shall be the only names printed on the ballot for Mayor; the names of Charles L. Rhodes, Jr. and Vernon D. Castille shall be the only names printed on the ballot for District No. 3; and Ronald Spooner and George W. Lacey shall be the only names printed on the ballot for District No. 4.

Section 4. One voting place shall be provided for each of the Precincts into which the City is divided for voting purposes; and, said Election shall be held therein by the Election Officers who are hereafter to be appointed.

Section 5. The provisions of Ordinance No. 81-47, as amended, where applicable, shall be applicable to the holding of said Special (Runoff) Election; provided that red colored indelible pencils are hereby prescribed for use in checking off voters' names. Absentee voting shall be conducted at the following places:

City Hall, 444 Fourth Street
Lakeview Town Hall, 640 Duff Drive
Pear Ridge Office Building, 3540 Ninth Avenue
Sabine Pass Water Office Building, 5040 S. Gulfway Drive
Senior Citizen Service Center, 920 DeQueen Boulevard
Port Acres Fire Station, 3232 Canal
Port Arthur Public Library, 3601 Cultural Center Drive
Wheatley School, 800 El Vista Road.

Section 6. Notice of the Special (Runoff) Election shall be published at least ten (10) days nor more than Twenty-five (25) days prior to the election in the official newspaper of the City of Port Arthur in accordance with Exhibit "A", attached hereto and made a part hereof. Absentee voting shall be conducted in accordance with State Law for Runoff Elections, commencing on November 16, 1981, and closing on November 25, 1981, which is found to be the earliest feasible time.

Section 7. The present Mayor and Councilmen shall continue in office until the returns of the Special (Runoff) Election ordered hereby, have been duly canvassed and the Mayor and all Councilmen chosen by the election held December 1, 1981, and the Special (Runoff) Election shall have duly qualified.

Section 8. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 9th day of November, A.D., 1981, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Conerly, Guidry, Huber, Clark, James & Bernard; NOES: None.

/s/BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

/s/ CAROLYN DIXON
Carolyn Dixon, City Secretary

APPROVED AS TO FORM:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

Exhibit "A"

ORDER AND NOTICE OF SPECIAL RUNOFF ELECTION IN THE CITY OF PORT ARTHUR

I, Bernis W. Sadler, Mayor of the City of Port Arthur, Texas, by virtue of the authority vested in me as Mayor of such City and by Ordinance No. ..... do hereby give Notice of a Special Runoff Election to be held in the City of Port Arthur, Texas, on Tuesday, December 1, 1981, between the hours of 7:00 o'clock A.M. and 7:00 o'clock P.M., for the purpose of electing a Mayor and Council Members for Districts Three (3) and Four (4), under that portion of the "4-2-3" plan adopted by City Council in Ordinance No. 81-35 and approved by the United States District Court for the District of Columbia. Council Members for said Districts Three (3) and Four (4) shall be elected by the qualified voters of the respective District. The Mayor shall be elected by the qualified voters of the City.

Said election shall be by Electronic Voting System as provided in Article 7.15 of the Election Code. Absentee Voting will be conducted, commencing on November 16, 1981, at the following places and shall be under the control and supervision of the City Secretary:

City Hall, 444 Fourth Street
Lakeview Town Hall, 640 Duff Street
Pear Ridge Office Building, 3540 Ninth Avenue
Sabine Pass Water Office Building, 5040 S. Gulfway Drive
Senior Citizen Service Center, 920 DeQueen Boulevard
Port Acres Fire Station, 3232 Canal
Port Arthur Public Library, 3601 Cultural Center Drive
Wheatley School, 800 El Vista Road.

A list of the election precinct polling places and election officers is attached hereto and made a part of this Order and Notice of Special Election.

WITNESS MY HAND at Port Arthur, Texas, this the ..... day of ....., A.D., 1981.

Bernis W. Sadler, Mayor

ATTEST:

Carolyn Dixon, City Secretary

PRECINCT NO.	*POLLING PLACE*
Precinct 33	*Sabine Pass Water Office Building 5040 South Gulfway Drive*
Presiding Judge	Mrs. Gusta Toups
Assistant Judge	Mrs. Carey LaBove
Clerk	Mrs. Mae Daughtry
Precinct 33	*Port Acres Fire Station, 3232 Canal*
Presiding Judge	Mrs. Louis Grand
Assistant Judge	Lily Radford
Clerk	Mildred Baggs
Clerk	Mazie Dore
Clerk	Donnie Hidlebridal
Precinct 34	*Wheatley School, 800 El Vista Road*
Presiding Judge	Ora Mitchell, Sr.
Assistant Judge	Bessie F. Davis
Clerk	Lillie Wright
Clerk	Delores Pierre
Clerk	Margaret Parker
Precinct 45	*Pear Ridge Community Center, 3540 9th Ave.*
Presiding Judge	Betty Richard
Assistant Judge	Lester Roberts
Clerk	Gracie Roberts
Clerk	Sophia DeRouen
Clerk	Marie Blanchard
Clerk	Sally Watson
Precinct 46	*Park Place Fire Station, 3300 Memorial Blvd.*
Presiding Judge	Julia Self
Assistant Judge	Mary Lynne Carleton
Clerk	Virginia Gerolamo
Clerk	Jeanette Hebert
Clerk	Margaret Floyd
Clerk	Goldie Hoffpauir
Clerk	Betty Dimicelli

Precinct 47 & 51	*Lewis Drive Fire Station, 3801 Lewis Drive*
Presiding Judge	Shirley Edgerly
Assistant Judge	Nelva DuFour
Clerk	Eunice Boutte
Clerk	Mrs. Robbie Haven
Clerk	Jean Hollier
Clerk	Lovee Gant
Precinct 48	*Lakeview Town Hall, 640 Duff Drive*
Presiding Judge	Mrs. Walter Robison
Assistant Judge	Walter Robison
Clerk	Mrs. Lydia Dupuis
Clerk	Mrs. Margie Fogle
Precinct 49	*Lee Elementary School, 3939 Delaware Dr.*
Presiding Judge	Mrs. H. P. Wylie
Assistant Judge	L. G. Douglas
Clerk	Mrs. James McGuff
Clerk	Mrs. L. G. Douglas
Clerk	Mr. James McGuff
Clerk	Mrs. Sara Delaney
Precinct 50	*Thomas Edison Junior High School, 3501 12th St.*
Presiding Judge	Mrs. Eunice Moore
Assistant Judge	Mrs. Ann Jenkinson
Clerk	Mrs. Louise Brown
Clerk	Mrs. Lottie Hollier
Clerk	Mrs. Rebecca Leon
Clerk	Mrs. C. B. Buddecke
Precinct 52 & 53	*2501 Ninth Street*
Presiding Judge	James L. Chelette
Assistant Judge	Mrs. James L. Chelette
Clerk	Paul Jordan
Clerk	Mrs. Paul Jordan
Clerk	Mary Raggio
Clerk	Mrs. Wynona Petite

Precinct 54	*Woodrow Wilson Junior High School 1500 Lakeshore Drive*
Presiding Judge	Mrs. T. H. Ridout
Assistant Judge	T. H. Ridout, Jr.
Clerk	Bernice Moore
Clerk	Georgia Thompson
Clerk	Dora Eaton
Precinct 55	*Franklin School, 10th St. & Mobile Avenue*
Presiding Judge	Mable Alexander
Assistant Judge	Helen Milton
Clerk	Willie B. Ford
Clerk	Angela Francene Hardie
Clerk	Wanda Gant
Precinct 57	*City Hall, 444 Fourth Street, Lobby*
Presiding Judge	Mrs. Clevester Godfrey
Assistant Judge	Mrs. Lillie Lofton
Clerk	Mrs. Adam Stelly
Clerk	Nina Gail Stelly
Clerk	Annie Jones
Precinct 58	*Former West Side Library, 740 W. Seventh St. (J. B. Matthews Activity Building)*
Presiding Judge	Mrs. Rebecca T. Martin
Assistant Judge	Marjiree Allen
Clerk	Gloria Ann Alford
Clerk	Velma Ruffin
Clerk	Marteal Bell
Precinct 59	*Grannis Ave. Fire Station, 1151 Grannis*
Presiding Judge	Elsie Frilot
Assistant Judge	Mrs. Lucille Johnson
Clerk	Gertrude James
Clerk	Lillian LeBlanc
Clerk	Ransom Strawder
Clerk	Mildred C. Taville

Precinct 70	***Port Arthur Public Library, 3601 Cultural Center Drive***
Presiding Judge	Mrs. Sally Jackson
Assistant Judge	Juanita Slaughter
Clerk	Mrs. Walter Hayes
Clerk	Nita Ham
Clerk	LaMerle Bonds Evans
Clerk	Evelyn Fontenot
Precinct 71	***Taft Elementary School, 2500 Taft Ave.***
Presiding Judge	Judy Mayeaux
Assistant Judge	Vernon Miller
Clerk	Mrs. Vernon Miller
Clerk	Mrs. Blanche Jordan
Clerk	Loretta Hebert
Precinct 76	***Thomas Jefferson High School, 2200 Jefferson Drive***
Presiding Judge	Virginia Moore
Assistant Judge	Mayme Ryan
Clerk	Mrs. Howard Simon
Clerk	Mrs. Mamie Lipo
Clerk	Doris Lasseigne
Clerk	Dale Piletere
Precinct 81	***Water Utilities Warehouse, 1601 - 19th St.***
Presiding Judge	Mrs. Gordy Moss
Assistant Judge	Mrs. Leona Gillard
Clerk	Mrs. A. B. Cantu
Clerk	Dorothy Joubert
Clerk	Mr. A. B. Cantu

CERTIFICATION

THE STATE OF TEXAS
COUNTY OF JEFFERSON

I, Carolyn Dixon, City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance 81-94 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 5th day of January, A.D., 1982.

/s/ CAROLYN DIXON
City Secretary of the City
of Port Arthur, Texas

(SEAL)

ORDINANCE NO. 81-94

An Ordinance Canvassing Returns of a Special (Runoff) Election Held the First Day of December, 1981, for the Purpose of Electing a Mayor and Two Councilmen From Districts Three and Four; Declaring Results of Elections of November 3, 1981, and December 1, 1981, and of the Drawing for Positions 7 and 8 of the City Council; and Providing the Effective Date Hereof.

WHEREAS, on November 3, 1981, a Special Election was held for the purpose of electing a Mayor and six Councilmen in accordance with the Charter of the City of Port Arthur, the provisions of the Texas Election Code, and Order of the United States District Court for the Eastern District of Texas, dated August 3, 1981, and said Special Election was canvassed by Ordinance No. 81-86 on November 9, 1981, whereby the positions of Mayor and Councilmen from Districts 3 and 4 were subject to a runoff election; and,

WHEREAS, on August 24, 1981, at 11:00 o'clock a.m., a drawing was held for Positions 7 and 8 to determine who would fill those positions; and,

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Texas Election Code, a Special Election (Runoff Election) was held on Tuesday, the 1st day of December, 1981, in the 21 Precincts into which the City of Port Arthur is divided for voting purposes, for the purpose of allowing the voters to elect a Mayor and one Councilman from Districts 3 and 4; and,

WHEREAS, the sealed returns of said Elections have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said Special Election (Runoff Election) after being examined and counted by the City Council, are found and declared to be true and

correct. There were cast at said Election for the respective candidates the number of votes shown by the following tabulated statements, to-wit:

MAYOR

Precincts	32	33	34	45	46	47&51	48	49	50
Bernis W. Sadler	42	541	22	576	904	752	469	537	401
Frederick Johnson	87	295	731	54	102	121	59	116	383

Precincts	52&53	54	55	57	58	59	70	71	76
Bernis W. Sadler	111	39	16	31	32	36	482	160	409
Frederick Johnson	552	245	378	243	743	888	62	31	70

Precincts	81	Abs.	Total
Bernis W. Sadler	51	2021	7632
Frederick Johnson	381	330	5871

COUNCILMAN DISTRICT 3

Precincts	45	46	47&51	70	Abs.	Total
Vernon D. Castille	298	389	299	298	539	1823
Charles L. Rhodes, Jr.	307	607	522	226	374	2036

COUNCILMAN DISTRICT 4

Precincts	33	34	59	81	Abs.	Total
George W. Lacey	542	265	328	170	184	1489
Ronald Spooner	266	478	557	250	133	1684

Section 2. The City Council has determined that said Special Election (Runoff Election) of December 1, 1981, and the Election of November 3, 1981, were duly called, ordered, and held in accordance with the Laws of the State of Texas, and the City's Charter; that the Ordinance or-

dering the Elections, and the Returns thereof, have been made by the proper officials; and, that the Election (Runoff) of December 1, 1981, resulted in the election of Bernis W. Sadler, Mayor; Charles L. Rhodes, Jr., District 3; and Ronald Spooner, District 4; and, that the Election of November 3, 1981, as canvassed by Ordinance No. 81-86, resulted in the election of Arthur Craft, District 1; Maurice Conerly, District 2; Walter Mosely, District 5; and Malcolm Clark, District 6. Premises considered, the aforementioned persons are hereby declared to be elected as Mayor and City Councilmen of the City of Port Arthur, Texas. That Arthur J. Guidry and Ray Bernard who drew positions for Positions 7 and 8 respectively, are hereby declared to be Councilmen for those respective Positions.

Section 3. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 7th day of December, A.D., 1981, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Conerly, Guidry, Clark, James & Bernard; NOES: None.

/s/BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

/s/ CAROLYN DIXON
Carolyn Dixon, City Secretary

APPROVED AS TO FORM:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

CITY OF PORT ARTHUR
COUNTY OF JEFFERSON

AFFIDAVIT OF CAROLYN DIXON.
CITY SECRETARY OF CITY OF PORT ARTHUR

Carolyn Dixon, having been duly sworn, deposes and says:

1. My name is Carolyn Dixon. I am City Secretary of the City of Port Arthur.

2. Before me appeared each of the candidates in the city council interim election held on November 3, 1981, with the exception of Ronnie Thompson, a write-in candidate, who is personally known to me.

3. The race of each candidate is as follows. The winner of each seat is designated *; where there was a run-off, those in the run-off are designated **.

Mayor

Bernis W. Sadler—white ** *
Edna Barbour—white
Robert "Whitey" Carr—white
Billy Joe Murphy—white
Joseph J. Gauthier—white
Frederick Johnson—black **
Ronnie Thompson—white

Councilman District 1

Earl Helmick—white
Arthur Craft—black *
Willie Lewis, Jr.—black

Councilman District 2

Pat Branson—white
Maurice Conerly—white *

Councilman District 3

Mark Woodall—white
Vernon D. Castille—white **
Charles L. Rhodes, Jr.—white ** *
J. C. Schmidt—white

Councilman District 4

Terry Blevins—white
Ronald Spooner—black ** *
Sib Greer—white
Aubrey Steve Felder—white
George W. Lacey—black **

Councilman District 5

Walter Mosely—black *
James Green—black
Cherry L. Ebeling—white
Ike Linden—black

Councilman District 6

Malcolm Clark—white *
Mark Woodall—white

/s/ _____
Carolyn Dixon,
City Secretary

On this 7th day of January 1982, Carolyn Dixon appeared before me and, having been duly sworn, executed the foregoing affidavit.

/s/ _____
Notary Public in and for
Jefferson County, Texas

Appellant's Brief

Supreme Court, U.S.
FILED
MAR 19 1982
ALEXANDER L. STEVAS
CLERK

No. 81-708

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

CITY OF PORT ARTHUR, TEXAS, *Appellant*,

v.

UNITED STATES OF AMERICA
and
ABRAHAM DOUGLAS, ELGIE JENKINS, WALTER MOSLEY, and WILLIE LEWIS, *Appellees*.

On Appeal from the United States District Court for the District of Columbia

---

BRIEF FOR THE APPELLANT

ROBERT Q. KEITH
MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Building
Beaumont, Texas 77701
(713) 835-5011
Counsel of Record for Appellant

JAMES DOUGLAS WELCH
MICHAEL K. HAMMAKER
POPHAM, HAIK, SCHNOBRICH, KAUFMAN & DOTY, LTD.
Suite 802
2000 L Street, N.W.
Washington, D.C. 20036
(202) 887-5154

GEORGE WIKOFF
City Attorney of Port Arthur
P.O. Box 1089
Port Arthur, Texas 77640
Attorneys for Appellant

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

QUESTIONS PRESENTED

A. Whether the district court misconstrued the requirements of the Voting Rights Act when it held that the dilutive effect of Port Arthur's territorial expansion was not sufficiently neutralized by a voting plan submitted jointly by the City and the United States which gave the expanded City's 35% black voting age population control of at least 33% of the council positions.

B. Whether the election plan developed and submitted jointly by the City and the United States in response to an order of the district court may be found discriminatory in purpose.

C. Whether the district court may require the City to adopt a plurality-win provision for the two non-mayoral at-large seats in its proposed nine member election plan when the plan already provides blacks a fair opportunity to obtain representation reasonably equivalent to their political strength.

D. Whether the district court failed to give proper weight to the Attorney General's determination that the proposed councilmanic election plan satisfies the Voting Rights Act as interpreted by this Court.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
STATUTE INVOLVED	2
STATEMENT OF THE CASE	2
A. A Brief History of This Litigation	3
B. The Voting Plan Now Before This Court	5
C. The Subsequent City Council Elections Implementing the 4-2-3 Plan	8
SUMMARY OF ARGUMENT	9
ARGUMENT:	
I. The District Court Misapplied Section 5 When it Refused to Approve the 4-2-3 Election Plan Submitted Jointly By the City and the United States	10
A. The Proposed Plan Provides Blacks With Representation Reasonably Equivalent to Their Political Strength	10
B. The Proposed Plan Has No Discriminatory Purpose	16
II. The District Court Exceeded Its Authority By Imposing A Condition Upon An Electoral Plan Which Already Satisfied Section 5	17
III. The District Court Failed to Give Proper Weight to The Attorney General's Determination That The 4-2-3 Plan Satisfied the Voting Rights Act.	20
CONCLUSION	22

Table of Contents Continued

Page

ADDENDUM:

A. City of Port Arthur, Texas Ordinance Nos. 81-86 and 81-94 ..... 1b

B. Affidavit of Carolyn Dixon, City Secretary of City of Port Arthur, dated January 7, 1982, Attesting to Results of Port Arthur Interim Elections 19b

TABLE OF AUTHORITIES

CASES:

Blanding v. *Dubose*, —— U.S. ——, 102 S.Ct. 715 (1982) 21

Beer v. *United States*, 425 U.S. 130 (1976) 15

City of Mobile, Ala. v. *Bolden*, 446 U.S. 55 (1980) ... 17, 18

City of Petersburg v. *United States*, 354 F.Supp. 1021 (D.D.C. 1972), *aff'd mem.*, 410 U.S. 962 (1973).. 11, 21

City of Richmond v. *United States*, 422 U.S. 358 (1975) ..... *passim*

City of Rome v. *United States*, 472 F.Supp. 221 (D.D.C. 1979), *aff'd*, 446 U.S. 156 (1980) 11, 13

City of Rome v. *United States*, 446 U.S. 156 (1980). 7, 11, 12

Connor v. *Finch*, 431 U.S. 407 (1977) 19

Ford Motor Credit Company v. *Milhollin*, 444 U.S. 555 (1980) 21

Grills v. *Branigin*, 284 F.Supp. 176 (S.D. Ind.), *aff'd per curiam sub. nom.*, *Branigin* v. *Duddleston*, 391 U.S. 364 (1968) 8

Joseph v. *United States Civil Service Comm'n.*, 554 F.2d 1140 (D.C. Cir. 1977) 8

Mosely v. *Sadler*, 469 F.Supp. 563 (E.D. Tex. 1979) .. 7, 8

Perkins v. *Matthews*, 400 U.S. 379 (1971) 21

Table of Authorities Continued

Page

Udall v. *Tallman*, 380 U.S. 1 (1965) 21

United Jewish Organizations of Williamsburgh, Inc. v. *Carey*, 430 U.S. 144 (1977) 7, 11, 12-13, 15, 20, 21

United States v. *Board of Commissioners of Sheffield, Ala.*, 435 U.S. 110 (1978) 20, 21

Whitcomb v. *Chavis*, 403 U.S. 124 (1971) 12

Wise v. *Lipscomb*, 437 U.S. 535 (1978) 19

STATUTE:

Voting Rights Act of 1965, § 5, *as amended*, 42 U.S.C. § 1973c (1976) ..... *passim*

REGULATION:

Procedures for Administration of Section 5 of the Voting Rights Act of 1965, 46 Fed. Reg. 870 (1981). 20

No. 81-708

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

CITY OF PORT ARTHUR, TEXAS, *Appellant,*

v.

UNITED STATES OF AMERICA

and

ABRAHAM DOUGLAS, ELGIE JENKINS, WALTER MOSLEY, and WILLIE LEWIS, *Appellees.*

On Appeal from the United States District Court for the District of Columbia

BRIEF FOR THE APPELLANT

OPINIONS BELOW

The June 12, 1981, opinion and order of the three-judge United States District Court for the District of Columbia are set forth at J.A. 1a-78a.[1] The opinion

[1] Citations to "J.A. —a" in this Brief refer to the separately bound Joint Appendix agreed upon by all parties. References to "Add. —b" refer to the Addendum attached hereto.

is reported at 517 F.Supp. 987; the order is presently unreported. The district court's order of July 14, 1981, also unreported, appears at J.A. 87a-88a.

JURISDICTION

The City of Port Arthur, Texas (referred to hereafter as Port Arthur or the City) filed this action seeking a declaratory judgment under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c (1976). The judgment of the three-judge district court was entered on July 14, 1981. Port Arthur filed its notice of appeal (J.A. 89a) on July 21, 1981, and probable jurisdiction was noted on January 25, 1982, —— U.S. ——, 50 U.S.L.W. 3591 (1982). The Court's jurisdiction is invoked under 42 U.S.C. § 1973c (1976).

STATUTE INVOLVED

Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended by 84 Stat. 314, 315 (1970), and further amended by 89 Stat. 402, 405 (1975), 42 U.S.C. § 1973c (1976), is set forth in full at J.A. 91a-92a.

STATEMENT OF THE CASE

This appeal concerns the propriety under Section 5 of the Voting Rights Act of the territorial expansion of the City of Port Arthur and consequent changes in its city counsel election plan. It presents the Court with circumstances which are novel in three important respects supporting reversal of the court below:

First, the voting plan rejected by the district court was agreed to by the City and the Department of

Justice and submitted jointly. (J.A. 79a-81a). Agreement with the government was reached only after Civil Rights Division lawyers had become intimately familiar with voting in Port Arthur and had, in fact, rejected four prior proposals.

Second, the plan agreed to by the United States and the City adds substantially to the electoral power of minority voters. Under the all at-large system in place heretofore, blacks have never elected more than one member to the city council. (J.A. 40a). Under the present plan, six of nine council positions will be chosen from fairly drawn single-member districts, three of which have substantial black majorities. (J.A. 79a-81a, lower court record on file with Supreme Court, Document No. 98 at 2). In support of the joint submission to the district court, the United States stated that even if Port Arthur used an all single-member district system, minority representation would not increase appreciably over that provided by this plan. (J.A. 80a).

Third, and most importantly, the Court can judge this plan not merely by statistical predictions, but by examining actual election results which demonstrate conclusively that it satisfies Section 5. In interim elections held last Fall, the City's 35% black voting age population controlled the selection of 33% of the council seats. (Add. 19b-20b).

A. A Brief History of This Litigation.

The voting changes involved in this Section 5 declaratory judgment action are Port Arthur's consolidation of two communities and the annexation of a third, and its establishment of a new election plan to determine the composition of a city council for the ex-

panded jurisdiction.[2] The two consolidations and a proposal to expand the city council from seven at-large members (the 6-0-1 plan), its configuration since 1963, to eight places (the 7-0-1 plan), also to be elected at-large, were submitted to the Attorney General for preclearance under the Act. His objection was interposed on March 24, 1978. Subsequently, Port Arthur submitted the annexation and a proposal that the city council be expanded to nine at-large positions (the 8-0-1 plan). This preclearance request was similarly denied on March 5, 1980.

After negotiations with the Department of Justice failed to produce results, Port Arthur filed its complaint in the district court seeking a declaratory judgment that its expansion[3] and the 8-0-1 voting plan were not discriminatory in purpose or effect. Thereafter, Port Arthur was permitted to amend its complaint by adding a second count which prayed for the same judgment as to a different configuration of the proposed nine member council.[4] This 4-4-1 voting plan

---

[2] In the district court, Port Arthur also sought a declaratory judgment with respect to the establishment of advisory councils from the two consolidated areas. This matter is no longer at issue.

[3] The consolidations and annexation were accomplished under different provisions of Texas law, the former by popular vote in the affected jurisdictions. Both forms of expansion are treated the same for Section 5 purposes and are referred to together hereinafter as "the expansion" or "the annexation".

[4] The proposed 4-4-1 plan was adopted by the voters of the expanded City in a charter change election on August 9, 1980, held with the approval of a three-judge district court sitting in the Eastern District of Texas. *See United States* v. *City of Port Arthur*, No. B-80-216-CA (E.D. Tex. July 24, 1980). It provided for election of four members from single-member districts and four mem-

was not presented to the Attorney General for preclearance. At the trial of the action, the parties directed evidence and argument principally to the validity of the 4-4-1 plan.

On June 12, 1981, the district court issued an order and memorandum opinion denying the requested relief. (J.A. 1a *et seq.*). The court found that the City of Port Arthur had "established that the principal motives for enlarging its boundaries . . . were nondiscriminatory," but that "the City ha[d] not shown the lack of a discriminatory purpose behind the adoption of either the 4-4-1 or the 8-0-1 plans." (J.A. 46a). Further, it held that Port Arthur had failed to prove that implementation of either of the proposed election schemes would not have a discriminatory effect. *Id.*

The district court retained jurisdiction over the matter and directed the City to devise within 15 days an electoral system which satisfied the concerns expressed in its opinion. (J.A. 78a). In response, Port Arthur proposed on June 29, 1981, that it hold a charter change election for the adoption of a new 4-2-3 voting plan consisting of a council chosen from six single-member districts and three at-large seats, including the mayor.

B. The Voting Plan Now Before This Court.

Following the order of June 12, 1981, the City and the Attorney General engaged in lengthy discussions to develop an electoral plan that would satisfy the

---

bers who would be elected at-large but required to reside in each of the same four districts. The mayor, who held the remaining position, also would be elected at-large.

Voting Rights Act in light of the findings of the district court. The result was a revision of the election plan submitted by Port Arthur on June 29, 1981, to include residency districts for the non-mayoral at-large seats. This revised plan, jointly submitted by the United States and Port Arthur on July 8, 1981, (J.A. 79a-81a) is the subject of Port Arthur's appeal here.

The plan agreed to is a 4-2-3 voting scheme which divides the City into four single-member districts (numbered one through four), each of which is entitled to elect one member to the nine member city council. In addition, one representative will be elected by residents of single-member District 5 (a combination of Districts 1 and 4) and another by the residents of single-member District 6 (a combination of Districts 2 and 3).[5] Three city council positions are to be elected at-large. Two of these at-large members, council positions seven and eight, are required to reside in District 5 and 6, respectively; the remaining at-large position is that of the mayor, for which there is no residency requirement. Each council member will be elected for a two-year term by majority vote.

The United States and the City agree that under the 4-2-3 plan, designed to comply with the requirements imposed by the district court's memorandum opinion of June 12, 1981, blacks will have the "opportunity to elect representatives of their choice in three

---

[5] Single-member Districts 1 through 4 are roughly equal in population, varying from 14,990 (District 1) to 15,670 (District 3). District 5 has a population of 30,300 and District 6 has 30,995 residents. City of Port Arthur's Report to the Court Pursuant to Order of June 12, 1981, at 2 (filed June 29, 1981). (Lower court record on file with Supreme Court, Document No. 98 at 2).

of the six single-member districts . . . ." (J.A. 79a). The Attorney General concluded that this opportunity to control the selection of 33% of the nine available council positions provides blacks, who are 35% of the voting age population in the post-annexation City, with "representation reasonably equivalent to their political strength in the enlarged city."[6] (J.A. 79a-80a). Moreover, the Attorney General noted that he had considered the significance, if any, of the absence of a plurality-win provision for the two non-mayoral at-large seats and that this fact did not justify denying Section 5 preclearance for the plan. *Id.*

In its July 14, 1981, order, the divided district court rejected the 4-2-3 plan proposed by the Attorney General and Port Arthur. Instead, and without explanation in an opinion, it offered to grant preclearance only on the condition that a plurality-win provision be imposed on the two non-mayoral at-large seats. (J.A. 87a-88a).[7]

---

[6] This Court has indicated its strong preference for using voting age population data to assess the impact of annexations on black voting strength in Section 5 cases. *City of Rome* v. *United States*, 446 U.S. 156, 186 n.22 (1980). *See also United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U.S. 144, 164 n.23 (1977).

[7] Thus, the only findings entered by the district court are in the June 12 opinion. However, these were rendered in the context of a voting plan vastly different from the present 4-2-3 plan embodying six single-member districts—the only one at issue here. Moreover, even if it could be said that the June 12 findings are germane, they are fundamentally at odds with the conclusions of the district court in *Mosely* v. *Sadler*, 469 F.Supp. 563 (E.D. Tex. 1979), a constitutional challenge to an at-large plan the City has since abandoned. Significantly, in *Mosely* the court made "extensive findings of fact concerning racial polarization, black particips-

C. The Subsequent City Council Elections Implementing the 4-2-3 Plan.

On November 3, 1981, and December 1, 1981, interim city council elections were held in the City of Port Arthur. These elections employed the six single-member districts of the 4-2-3 plan now before this Court.[8] The at-large seats were not part of the election since they are at issue here. All parties stipulated to the procedure used. As predicted in the joint submission to the district court (J.A. 79a), three black councilmen were chosen from the districts with substantial black majorities (Districts 1, 4 and 5). (Add. 19b-20b).[9]

---

tion in the political process, and municipal responsiveness to black needs in the areas of employment and services" (J.A. 32a-33a) which contradict in large part the opinion below in this case. The *Mosely* court held that the at-large plan there at issue was neither discriminatory in its intent nor its effect.

[8] The interim elections were held pursuant to orders of the United States District Court for the Eastern District of Texas in *United States* v. *City of Port Arthur* (No. B-80-216-CA, entered August 3, 1981) and of the district court below (entered August 6, 1981). (Lower court record on file with Supreme Court, Document No. 106).

[9] Certified copies of the Port Arthur city council ordinances canvassing the returns of these elections have been lodged with the Clerk of this Court. For the convenience of the Court and the parties, these ordinances are reproduced at Add. 1b-17b. An affidavit of the City Secretary, showing a racial breakdown of the candidates for each position, is also reproduced at Add. 19b-20b. (The original has been lodged with the Court's Clerk.) Although these elections were held subsequent to the close of the record in the district court, it is well recognized that this Court can take judicial notice of the holding of elections and their results. *Grills* v. *Branigin*, 284 F.Supp. 176 (S.D. Ind.), *aff'd per curiam sub. nom.*, *Branigin* v. *Duddleston*, 391 U.S. 364 (1968). *Accord*, *Joseph* v. *United States Civil Service Comm'n.*, 554 F.2d 1140, 1147-48 (D.C. Cir. 1977).

Given the plan's nine council positions (including the mayor) and the expanded City's 35% black voting age population, control by blacks of 33% of the seats equates to representation reasonably equivalent to minority political strength in the enlarged community.

SUMMARY OF ARGUMENT

Preclearance of voting changes cannot be withheld under Section 5 if it is shown that they do "not have the purpose and will not have the effect of denying or abridging the right to vote on account of race . . . ." The judgment below must be reversed because Port Arthur has demonstrated conclusively that the annexation and the proposed 4-2-3 councilmanic election plan satisfy this two-pronged "effect" and "purpose" test.

The plan satisfies the governing Section 5 "effect" test articulated by this Court in *City of Richmond* v. *United States,* 422 U.S. 358 (1975). In the district court, the Attorney General and the City showed that under the agreed upon 4-2-3 plan, the City's 35% black voting age population would control election of three representatives on the nine member council. (J.A. 79a). Thereafter, in interim elections held in late 1981, the plan produced exactly those results (Add. 19b-20b). There can be no dispute, therefore, that the plan "fairly reflects the strength of the Negro community as it exists after the annexation" and affords blacks "representation reasonably equivalent to their political strength in the enlarged community." *City of Richmond,* 422 U.S. at 370-71.

Nor can there be any doubt that Port Arthur's conduct satisfies the "purpose" test of Section 5. The

court below found that no discriminatory motive prompted the City's annexation of the three jurisdictions involved. (J.A. 46a). Further, the 4-2-3 election plan was drafted by Port Arthur working with the Attorney General, specifically in response to the lower court's opinion and order of June 12, 1981. Thus, the plan now before this Court was developed as a direct response to concerns aired by the district court and with the help of the Attorney General. In these circumstances, there is no basis for a finding that the plan was adopted for a discriminatory purpose.

Accordingly, the annexations and the 4-2-3 election plan proposed by the City and the Attorney General comply with Section 5 of the Act. The ruling of the lower court should be reversed.

ARGUMENT

I. The District Court Misapplied Section 5 When It Refused to Approve the 4-2-3 Election Plan Submitted Jointly By the City and the United States.

Port Arthur's voting changes had neither a prohibited purpose nor effect. The court below exceeded its authority by denying preclearance and imposing a plurality-win provision upon the 4-2-3 plan's two nonmayoral at-large seats.

A. *The Proposed Plan Provides Blacks With Representation Reasonably Equivalent to Their Political Strength.*

The dilution of black voting strength in Port Arthur[10] which flowed from the City's territorial ex-

[10] The district court found that the expansion of Port Arthur increased the voting age population of non-blacks by 18% and the voting age population of blacks by 0.48%. (J.A. 53a n.153).

pansion does not, by itself, render the annexation impermissible under Section 5. Rather, the Act requires that the City draft an election plan which "fairly reflects the strength of the Negro community as it exists after the annexation" and which "would afford [it] representation reasonably equivalent to [its] political strength in the enlarged community." *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U.S. 144, 160 (1977), *quoting City of Richmond* v. *United States*, 422 U.S. 358, 370-71 (1975). *Accord, City of Rome* v. *United States*, 446 U.S. 156, 187 (1980); *City of Petersburg* v. *United States*, 354 F. Supp. 1021, 1031 (D.D.C. 1972), *aff'd mem.*, 410 U.S. 962 (1973).[11]

1. The plan now before the Court employs six single-member districts, three of which have substantial black majorities (District 1, 4, and 5).[12] Black voters in these districts will be able to elect representatives of their choice to the council, thereby giving the black community the opportunity to control selection of 33% of the nine council positions. In the joint submission to the district court, the Attorney General stated that this voting power was reasonably commensurate with black political strength, given the lower court's find-

---

[11] The district court in *City of Rome* described the inquiry as "whether the black community, after the annexations, has a fair opportunity to obtain representation reasonably commensurate with its post-annexation numerical strength." *City of Rome* v. *United States*, 472 F.Supp. 221, 247 (D.D.C. 1979), *aff'd*, 446 U.S. 156 (1980).

[12] Blacks comprise 79% of District 1, 62.78% of District 4, and 70.83% of District 5. City of Port Arthur's Report to the Court Pursuant to Order of June 12, 1981, at 2 (filed June 29, 1981) (Lower court record on file with Supreme Court, Document No. 98 at 2).

ing (J.A. 54a) that blacks constitute approximately 35% of the voting age population in the post-annexation City. (J.A. 79a).

Subsequent to the close of the record below, interim city council elections were held in Port Arthur on November 3 and December 1, 1981. As predicted in the joint submission of the City and the United States, the 4-2-3 plan resulted in the election of three black candidates to the council. That is, the City's 35% black voting age population in fact elected 33% of the council positions in an actual election.

The Court's voting rights decisions have recognized that access to the political process boils down to one's ability to influence the election of officials in proportion to one's strength in the community. These decisions have emphasized the importance of evaluating proposed voting changes in the context of their "real-life impact". *See Whitcomb* v. *Chavis*, 403 U.S. 124, 146 (1971). Thus, for example, in *City of Rome*, 446 U.S. at 186, the Court criticized the city for not presenting informative evidence as to the operative effect of its voting plan. The present case stands in marked contrast. Here, the Court is uniquely able to assess the impact of the voting changes because the operation of the plan's single-member districts was "tested" in actual elections in the Fall of 1981. These interim election results provide the most dramatic and persuasive proof possible that the 4-2-3 election plan gives Port Arthur's minority voters "representation reasonably equivalent to their political strength in the enlarged community." *City of Richmond*, 422 U.S. at 370-71. *Accord, City of Rome*, 446 U.S. at 187; *United*

Jewish Organizations of Williamsburgh, Inc., 430 U.S. at 160.

In addition to the clear-cut and proven political dominance of blacks in Districts 1, 4, and 5, the plan also provides for substantial minority influence over the selection of at-large position 7, which is chosen from a 70.83% black district. As the United States noted in the district court, the residency requirement associated with at-large seat 7 "assure[s] that one of the at-large representatives will reside in, and hopefully represent the interest of, the portion of the city where a sizeable majority of the black population resides." (J.A. 81a). The ability to affect the position 7 race, while concededly of less importance than the overt political control by blacks of three single-member districts, is nonetheless extremely significant. As the district court noted in *City of Rome*, "adequacy of representation is not measured solely by the black community's ability to elect its first-choice candidate." *City of Rome* v. *United States*, 472 F.Supp. 221, 248 (D.D.C. 1979), *aff'd*, 446 U.S. 156 (1980).

The 4-2-3 plan plainly satisfies the clear and unambiguous test established in *City of Richmond* for measuring compliance with Section 5. Indeed, the plan provides blacks the same opportunity to elect representatives as would an exclusively single-member district plan. After its more than three years of study of voting in Port Arthur, the United States concluded that, were the City to devise a fairly drawn plan for eight single-member districts and a mayor, "it does not appear that minority representation would increase appreciably" over that provided by the 4-2-3 plan. (J.A. 80a).

2. The striking parallels between the *City of Richmond* litigation and the present case show plainly the lower court's error in rejecting the 4-2-3 plan. Richmond had annexed territory which reduced the black population in the city from 52% to 42%. Amendments to its electoral plan were opposed by the United States and rejected by the district court. Thereafter, the City and the Attorney General came to an agreement and jointly submitted a plan for the court's approval under Section 5. The district court rejected this plan too, on the ground that dilution of minority voting rights had not been dissipated "to the *greatest* extent reasonably possible." *City of Richmond,* 422 U.S. at 366-67 (emphasis added). The proposed voting plan did not sufficiently minimize the dilution of black voting power, the lower court reasoned, because an alternative plan would have given blacks an additional council seat. In the Supreme Court this decision was vacated. A post-annexation election plan is not required to maximize minority representation, but only to "*fairly* [reflect] the strength of the Negro community as it exists after the annexation" so as to "afford [minorities] representation *reasonably equivalent* to their political strength in the enlarged community." *City of Richmond,* 422 U.S. at 370-71 (emphasis added).

The lower court here has committed the same error that required reversal in *City of Richmond.* Just as in *City of Richmond,* Port Arthur's election plan was agreed to by the City and the Attorney General and jointly submitted to the lower court for Section 5 approval. (J.A. 79a-81a). Similarly, the lower court here rejected the proposed electoral plan because another plan might increase minority voting strength still further. (J.A. 87a-88a). And, most importantly,

the present plan, like that the Court approved in *City of Richmond,* already affords minorities representation reasonably equivalent to their political strength in the enlarged community. Section 5 has never been held to require more.

3. Its formulation of the applicable standard reflects the Court's recognition that it would be unreasonable, if not impossible, to require cities to devise voting plans that afford minorities representation *precisely* proportional to their political strength in the jurisdiction. Obviously, any city council involves a relatively small number of elected officials.[13] Given this constraint, even if Port Arthur were able to draft a plan assuring blacks the opportunity to elect four members (or 44.4%) of the nine member council, the result would be substantial over-representation of the City's black community. No decision of this Court has construed the Act in such a far-reaching fashion.[14]

---

[13] Neither the court below nor any party to this case has suggested that Port Arthur's council should be expanded beyond nine members.

[14] Indeed, the very definition of proportional representation precludes such over-representation. *See, e.g., United Jewish Organizations of Williamsburgh, Inc.,* 430 U.S. at 169 (Brennan, J. concurring) (approving a pattern of districting in New York County "closely approximating" proportional representation). Significantly, in *Beer* v. *United States,* it was said that if a proportional representation standard were used to test the adequacy of the New Orleans election plan there at issue, the 34.5% black voting age population "should reasonably expect to control at least two" of the seven city council seats, or 28.6% of the council's members. 425 U.S. 130, 159 n.19 (1976) (Marshall, J., dissenting). The 2% representation differential in the Port Arthur election plan is far more favorable to blacks than the 5.9% differential which Justice Marshall has said would satisfy the Act.

By denying preclearance to the election plan proposed in this case, the district court has created considerable uncertainty about the level of representation minorities must be assured after an annexation. The 4-2-3 plan guarantees black voters, who are 35% of the voting age population, control over the selection of 33% of the city council representatives. The court below, without explaining why this 2% differential "insufficiently neutralize[d] the adverse impact upon minority voting strength," (J.A. 87a) held that the Voting Rights Act requires more. This holding is without support in the opinions of this Court or the language of Section 5 and is clearly erroneous.

B. *The Proposed Plan Has No Discriminatory Purpose.*

The Voting Rights Act requires that voting changes subject to the Act not be tainted by discriminatory intent. In its June 12, 1981, opinion, the district court found that Port Arthur's annexation was not so motivated, observing that the addition of Pear Ridge, Lakeview, and Sabine Pass offered the citizenry distinct advantages. (J.A. 46a, 67a-68a). This holding that the City's purpose in undertaking the expansion complies with the Act has not been challenged by any party to this proceeding.[18]

There is no finding in the July 14, 1981, order concerning Port Arthur's purpose in proposing the 4-2-3 election plan. Nevertheless, it is clear that the proposed

---

[18] The factors that led the district court to conclude that the discarded 8-0-1 and 4-4-1 plans had been adopted for an illicit purpose have no bearing on the question whether the City was motivated by an impermissible intent when it adopted the present plan at a later time and in vastly different circumstances.

plan meets the purpose standard of Section 5. It was specifically adopted in response to the June 12, 1981, order and opinion of the district court which expressed concerns regarding the City's prior proposal. (J.A. 77a-78a). The plan was developed in consultation with the United States and was agreed to by the Attorney General and jointly submitted. (J.A. 79a-81a). These facts compel the conclusion that Port Arthur's purpose in proposing the 4-2-3 plan was not discriminatory and satisfies Section 5 of the Voting Rights Act.

II. The District Court Exceeded Its Authority By Imposing A Condition Upon An Electoral Plan Which Already Satisfied Section 5.

Given the racial composition of Port Arthur and the results of the interim elections, it is beyond dispute that the 4-2-3 plan provides the City's black minority with representation equivalent to its numbers. Nevertheless, the district court's order imposes a further condition on Port Arthur's proposal as a term of preclearance. The court found inadequate the almost exact 35%/33% ratio of black voting age population to minority-controlled council seats. Instead, it ordered that the proposed plan must be further tilted toward minority representation by elimination of the majority vote aspect of the two at-large seats. The effect of the lower court's unexplained ruling is to hold that a majority vote requirement is, *per se*, a violation of Section 5 of the Voting Rights Act. There is no support whatever in precedent for such an extreme position. Indeed, this court's landmark *City of Richmond* ruling stands for exactly the opposite proposition.[16]

---

[16] In *City of Mobile, Ala.* v. *Bolden*, 446 U.S. 55, 58 (1980), the Court posed the question whether an at-large majority vote "system

There, the district court refused to preclear a proposed electoral plan, declaring that it could reject a system which failed to minimize dilution of black voting power to the greatest possible extent. *City of Richmond,* 422 U.S. at 366-67. On appeal here, the Court squarely rejected this expansive interpretation of a district court's power under the Act:

> As long as the ward system fairly reflects the strength of the Negro community as it exists after the annexation, we *cannot* hold, without more specific legislative directions, that such an annexation is nevertheless barred by § 5.

City of Richmond, 422 U.S. at 371 (emphasis added).

As demonstrated in the interim elections, the plan advanced by the City reflects a careful balance of the rights of all its citizens and fairly reflects the political strength of Port Arthur's black population. Blacks will have outright control of three of nine seats, giving them influence in the council directly in proportion to their numbers. In addition, as the Attorney General recognized (J.A. 31a), this group will have significant influence over a fourth seat elected at-large from a residency district which is more than 70% black. In trying to achieve fairness for all people—black and white—the plan uses a majority vote requirement for the two at-large seats as a means of balancing access

---

of municipal elections violates the rights of [minority] voters in contravention of federal statutory or constitutional law." Noting that "this is the same basic electoral system followed by literally thousands of municipalities . . .", it held that no such broad prohibition exists. *Id.* at 60, 80.

to them. Changing this requirement to a plurality-win system significantly alters the nature of the plan by tilting it further toward black representation, when that group is otherwise fully compensated by the plan's single-member feature. Thus, the district court exceeded its authority by imposing an over-representation requirement not contemplated by the Act or by this Court's rulings.

Once it has been shown that minorities are "fairly" represented under an election plan, Section 5 does not allow the district court to substitute its wisdom for that of elected municipal legislators. *City of Richmond*, 422 U.S. at 371. This Court "has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the federal court should make every effort not to preempt. *Connor* v. *Finch*, 431 U.S. 407, 414-415 (1977) [additional citations omitted]." *Wise* v. *Lipscomb*, 437 U.S. 535, 539 (1978).

Finally, by imposing a requirement beyond that articulated in *City of Richmond*, the district court's ruling unnecessarily confuses voting rights jurisprudence. Legislators who embark on the difficult and politically sensitive task of amending electoral plans need concise rules for determining in advance whether the requirements imposed by the Voting Rights Act have been met. One of the principal features of the *City of Richmond* standard has been its remarkable clarity. By imposing a condition not required by the rule heretofore applied, the decision below deprives those charged with establishing voting procedures of the predictability which is so essential to the success of the Act.

III. The District Court Failed to Give Proper Weight to The Attorney General's Determination That The 4-2-3 Plan Satisfied the Voting Rights Act.

In the district court, the Attorney General concluded that the 4-2-3 election plan complied with the requirements of the Voting Rights Act and urged preclearance. (J.A. 81a). This determination was reached only after years of examining voting in Port Arthur and after rejecting four plans previously proposed by the City.[17] The Attorney General's judgment is supported by the obvious improvement the 4-2-3 plan will effect in black voting rights in Port Arthur owing to the increase in the number of council seats, the use of fairly-drawn single-member districts, and the residency requirement of the at-large seats. Under the seven-seat all at-large plan previously in effect, blacks have never elected more than one representative to the council. (J.A. 40a).

Under Section 5, the Attorney General "is constituted champion of the interests of minority voters . . . ." *United Jewish Organizations of Williamsburgh, Inc.*, 430 U.S. at 175 (Brennan, J. concurring in part). He has authority equal to that of the United States District Court for the District of Columbia to approve voting changes under the Act. 42 U.S.C. § 1973c (1976). *See also* 46 Fed. Reg. 870, 878 (1981). His vast experience with voting rights gives him special insight into Section 5, and "this Court in the past has given great deference to his interpretations of [the Act]." *United States* v. *Board of Commissioners of Sheffield, Ala.*, 435 U.S. 110, 131 (1978). *Accord, Blanding* v.

---

[17] The four plans found unsatisfactory by the Attorney General were: the at-large seven and eight member proposals, the 4-4-1 proposal, and the 4-2-3 plan without residency districts.

DuBose, —— U.S. ——, 102 S.Ct. 715, 719 (1982); *Ford Motor Credit Company* v. *Milhollin*, 444 U.S. 555 (1980); *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965). Under well established precedent, therefore, the district court should have given considerable weight to the Attorney General's conclusion that the 4-2-3 election plan complied with the "remedial objectives" of the Act. *United Jewish Organizations of Williamsburgh, Inc.*, 430 U.S. at 175. *See also City of Petersburg* v. *United States*, 354 F.Supp. 1021, 1031 (D.D.C. 1972), *aff'd mem.*, 410 U.S. 962 (1973); *Perkins* v. *Matthews*, 400 U.S. 379, 390-91 (1971).

No weight should be given now to the belated decision of the Department of Justice to support the district court's ruling. As noted in its Motion to Affirm (at p. 7), the United States' "position in this appeal is somewhat awkward." The Solicitor General specifically stated that the proposed 4-2-3 plan could properly have been adopted by the district court. (U.S. Motion to Affirm at 7n.). Accordingly, the government's position is grounded in procedure, not in opposition to the merits of the 4-2-3 plan.

CONCLUSION

For the reasons submitted, this Court should vacate the July 14, 1981 order of the district court and remand the case to that court with instructions to preclear Port Arthur's 4-2-3 plan as proposed.

Respectfully submitted,

ROBERT Q. KEITH
MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Building
Beaumont, Texas 77701
(713) 835-5011

Counsel of Record for Appellant

JAMES DOUGLAS WELCH
MICHAEL K. HAMMAKER
POPHAM, HAIK, SCHNOBRICH,
KAUFMAN & DOTY, LTD.
Suite 802
2000 L Street, N.W.
Washington, D.C. 20036
(202) 887-5154

GEORGE WIKOFF
City Attorney of Port Arthur
P.O. Box 1089
Port Arthur, Texas 77640

Attorneys for Appellant

March 19, 1982

CERTIFICATION

THE STATE OF TEXAS
COUNTY OF JEFFERSON

I, Carolyn Dixon, City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance 81-86 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 5th day of January, A.D., 1982.

/s/ CAROLYN DIXON
City Secretary of the City
of Port Arthur, Texas

(SEAL)

ORDINANCE NO. 81-86

An Ordinance Canvassing the Returns of a Special Election Held in the City of Port Arthur on Tuesday the 3rd Day of November A.D., 1981, for the Purpose of Electing a Mayor and Six Councilmen; and Providing for the Effective Date Hereof.

WHEREAS, in accordance with the Charter of the City of Port Arthur, the provisions of the Texas Election Code, and Order of the United States District Court for the Eastern District of Texas, dated August 3, 1981, a Special Interim Election was held on Tuesday, the 3rd day of November, A.D., 1981, in the twenty-one (21) Precincts into which the City of Port Arthur is divided for voting purposes; and,

WHEREAS, said Election was held for the purposes of allowing the qualified voters to elect a Mayor and one City Councilman from Districts numbered One, Two, Three, Four, Five and Six; and,

WHEREAS, the sealed returns of said election have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said Special Interim Election after being examined and counted by the City Council, are found and declared to be true and correct. There were cast at said election for the respective candidates the number of votes shown by the following tabulated statements, to-wit:

MAYOR

Precincts	32	33	34	45	46	47&51	48	49
Bernis W. Sadler	15	402	39	396	775	587	379	429
Edna Barbour	1	29	12	15	12	12	16	13
Robert "Whitey" Carr	2	18	6	16	12	8	8	12
Billy Joe Murphy	4	66	17	19	32	16	28	8
Joseph J. Gauthier	134	248	92	117	138	131	86	98
Frederick Johnson	4	155	466	23	43	48	24	49
Ronnie Thompson	0	0	0	0	2	0	0	0

Precincts	50	52&53	54	55	57	58	59	70
Bernis W. Sadler	367	105	39	21	33	78	47	381
Edna Barbour	16	5	4	5	6	15	15	12
Robert "Whitey" Carr	8	12	3	11	4	11	15	3
Billy Joe Murphy	12	14	2	14	9	19	17	14
Joseph J. Gauthier	108	63	31	41	29	80	70	66
Frederick Johnson	232	330	137	220	150	467	561	23
Ronnie Thompson	0	0	0	0	0	0	0	0

Precincts	71	76	81	Abs.	Total
Bernis W. Sadler	115	327	51	1065	5651
Edna Barbour	6	5	8	136	250
Robert "Whitey" Carr	6	5	8	46	214
Billy Joe Murphy	23	13	7	32	366
Joseph J. Gauthier	35	54	65	93	1779
Frederick Johnson	1	33	249	136	3351
Ronnie Thompson	0	0	0	0	2

COUNCILMAN DISTRICT 1

Precincts	32	52&53	54	55	57	58	Abs.	Total
Earl Helmick	26	58	15	6	6	21	35	167
Arthur Craft	105	200	101	130	109	361	116	1122
Willie Lewis, Jr.	5	227	95	148	92	297	43	907

COUNCILMAN DISTRICT 2

Precincts	48	49	50	71	76	Abs.	Total
Pat Branson	188	217	346	62	148	68	1029
Maurice Conerly	322	368	328	113	256	354	1741

COUNCILMAN DISTRICT 3

Precincts	45	46	47&51	70	Abs.	Total
Mark Woodall	85	145	90	44	129	493
Vernon D. Castille	161	261	207	217	147	993
Charles L. Rhodes, Jr.	161	379	323	109	150	1122
J. C. Schmidt	166	143	104	110	60	583

COUNCILMAN DISTRICT 4

Precincts	33	34	59	81	Abs.	Total
Terry Blevins	82	2	7	2	9	102
Ronald Spooner	143	408	372	170	73	1171
Sib Greer	450	10	27	19	75	581
Aubrey Steve Felder	126	14	10	12	9	171
George W. Lacey	72	169	252	139	68	700

COUNCILMAN DISTRICT 5

Precincts	32	33	34	52&53	54	55	57	58	59
Walter Mosely	23	249	450	263	114	182	119	376	428
James Green	18	112	57	95	49	51	48	133	198
Cherry L. Ebeling	12	172	3	40	15	5	4	2	3
Ike Linden	82	269	119	101	38	58	45	140	75

Precincts	81	Abs.	Total
Walter Mosely	199	177	2580
James Green	79	92	932
Cherry L. Ebeling	15	59	330
Ike Linden	66	84	1077

COUNCILMAN DISTRICT 6

Precinct	45	46	47&51	48	49	50	70	71	76	Abs.	Total
Malcolm Clark	404	707	578	399	449	493	359	139	325	726	4644
Mark Woodall	0	0	0	0	0	0	0	0	0	2	2

Section 2. The City Council has determined that said Election was duly called, ordered, and held in accordance with the Laws of the State of Texas, and the Charter of the City of Port Arthur; that the Ordinance ordering the Election, and the returns thereof have been made by the proper officials.

Section 3. It has been determined that there were more than two candidates for the office of Mayor, and none of them received a majority of all votes cast in said Districts; and further, that Bernis W. Sadler and Frederick Johnson are the two candidates for Mayor who received the highest number of votes. It has also been determined that there were more than two candidates for the office of Councilman in District Number 3, none of them received a majority of all votes cast in said District, and that Charles L. Rhodes, Jr. and Vernon D. Castille are the two candidates receiving the highest number of votes; and it has also been determined that there were more than two candidates for the office of Councilman in District Number 4, none of them received a majority of all votes cast in said District, and that Ronald Spooner and George W. Lacey are the two candidates receiving the highest number of votes. It is therefore ordered, pursuant to the provisions of Article III, Section 8 of the City's Charter, that a special election (runoff election) shall be held on December 1, 1981, for the purpose of selecting a Mayor and a Councilman from Districts Numbered 3 and 4. The names of Bernis W. Sadler and Frederick Johnson shall be the only names printed on the ballot for Mayor; the names of Charles L. Rhodes, Jr. and Vernon D. Castille shall be the only names printed on the ballot for District No. 3; and Ronald Spooner and George W. Lacey shall be the only names printed on the ballot for District No. 4.

Section 4. One voting place shall be provided for each of the Precincts into which the City is divided for voting purposes; and, said Election shall be held therein by the Election Officers who are hereafter to be appointed.

Section 5. The provisions of Ordinance No. 81-47, as amended, where applicable, shall be applicable to the holding of said Special (Runoff) Election; provided that red colored indelible pencils are hereby prescribed for use in checking off voters' names. Absentee voting shall be conducted at the following places:

City Hall, 444 Fourth Street
Lakeview Town Hall, 640 Duff Drive
Pear Ridge Office Building, 3540 Ninth Avenue
Sabine Pass Water Office Building, 5040 S. Gulfway Drive
Senior Citizen Service Center, 920 DeQueen Boulevard
Port Acres Fire Station, 3232 Canal
Port Arthur Public Library, 3601 Cultural Center Drive
Wheatley School, 800 El Vista Road.

Section 6. Notice of the Special (Runoff) Election shall be published at least ten (10) days nor more than Twenty-five (25) days prior to the election in the official newspaper of the City of Port Arthur in accordance with Exhibit "A", attached hereto and made a part hereof. Absentee voting shall be conducted in accordance with State Law for Runoff Elections, commencing on November 16, 1981, and closing on November 25, 1981, which is found to be the earliest feasible time.

Section 7. The present Mayor and Councilmen shall continue in office until the returns of the Special (Runoff) Election ordered hereby, have been duly canvassed and the Mayor and all Councilmen chosen by the election held December 1, 1981, and the Special (Runoff) Election shall have duly qualified.

Section 8. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 9th day of November, A.D., 1981, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Conerly, Guidry, Huber, Clark, James & Bernard; NOES: None.

/s/BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

/s/ CAROLYN DIXON
Carolyn Dixon, City Secretary

APPROVED AS TO FORM:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

Exhibit "A"

ORDER AND NOTICE OF SPECIAL RUNOFF ELECTION IN THE CITY OF PORT ARTHUR

I, Bernis W. Sadler, Mayor of the City of Port Arthur, Texas, by virtue of the authority vested in me as Mayor of such City and by Ordinance No. ..... do hereby give Notice of a Special Runoff Election to be held in the City of Port Arthur, Texas, on Tuesday, December 1, 1981, between the hours of 7:00 o'clock A.M. and 7:00 o'clock P.M., for the purpose of electing a Mayor and Council Members for Districts Three (3) and Four (4), under that portion of the "4-2-3" plan adopted by City Council in Ordinance No. 81-35 and approved by the United States District Court for the District of Columbia. Council Members for said Districts Three (3) and Four (4) shall be elected by the qualified voters of the respective District. The Mayor shall be elected by the qualified voters of the City.

Said election shall be by Electronic Voting System as provided in Article 7.15 of the Election Code. Absentee Voting will be conducted, commencing on November 16, 1981, at the following places and shall be under the control and supervision of the City Secretary:

City Hall, 444 Fourth Street
Lakeview Town Hall, 640 Duff Street
Pear Ridge Office Building, 3540 Ninth Avenue
Sabine Pass Water Office Building, 5040 S. Gulfway Drive
Senior Citizen Service Center, 920 DeQueen Boulevard
Port Acres Fire Station, 3232 Canal
Port Arthur Public Library, 3601 Cultural Center Drive
Wheatley School, 800 El Vista Road.

A list of the election precinct polling places and election officers is attached hereto and made a part of this Order and Notice of Special Election.

WITNESS MY HAND at Port Arthur, Texas, this the ..... day of ....., A.D., 1981.

Bernis W. Sadler, Mayor

ATTEST:

Carolyn Dixon, City Secretary

PRECINCT NO.	*POLLING PLACE*
Precinct 32	*Sabine Pass Water Office Building 5040 South Gulfway Drive*
Presiding Judge	Mrs. Gusta Toups
Assistant Judge	Mrs. Carey LaBove
Clerk	Mrs. Mae Daughtry
Precinct 33	*Port Acres Fire Station, 3232 Canal*
Presiding Judge	Mrs. Louis Grand
Assistant Judge	Lily Radford
Clerk	Mildred Baggs
Clerk	Mazie Dore
Clerk	Donnie Hidlebridal
Precinct 34	*Wheatley School, 800 El Vista Road*
Presiding Judge	Ora Mitchell, Sr.
Assistant Judge	Bessie F. Davis
Clerk	Lillie Wright
Clerk	Delores Pierre
Clerk	Margaret Parker
Precinct 45	*Pear Ridge Community Center, 3540 9th Ave.*
Presiding Judge	Betty Richard
Assistant Judge	Lester Roberts
Clerk	Gracie Roberts
Clerk	Sophia DeRouen
Clerk	Marie Blanchard
Clerk	Sally Watson
Precinct 46	*Park Place Fire Station, 3300 Memorial Blvd.*
Presiding Judge	Julia Self
Assistant Judge	Mary Lynne Carleton
Clerk	Virginia Gerolamo
Clerk	Jeanette Hebert
Clerk	Margaret Floyd
Clerk	Goldie Hoffpauir
Clerk	Betty Dimicelli

Precinct 47 & 51	***Lewis Drive Fire Station, 3801 Lewis Drive***
Presiding Judge	**Shirley Edgerly**
Assistant Judge	**Nelva DuFour**
Clerk	**Eunice Boutte**
Clerk	**Mrs. Robbie Haven**
Clerk	**Jean Hollier**
Clerk	**Lovee Gant**
Precinct 48	***Lakeview Town Hall, 640 Duff Drive***
Presiding Judge	**Mrs. Walter Robison**
Assistant Judge	**Walter Robison**
Clerk	**Mrs. Lydia Dupuis**
Clerk	**Mrs. Margie Fogle**
Precinct 49	***Lee Elementary School, 3939 Delaware Dr.***
Presiding Judge	**Mrs. H. P. Wylie**
Assistant Judge	**L. G. Douglas**
Clerk	**Mrs. James McGuff**
Clerk	**Mrs. L. G. Douglas**
Clerk	**Mr. James McGuff**
Clerk	**Mrs. Sara Delaney**
Precinct 50	***Thomas Edison Junior High School, 3501 12th St.***
Presiding Judge	**Mrs. Eunice Moore**
Assistant Judge	**Mrs. Ann Jenkinson**
Clerk	**Mrs. Louise Brown**
Clerk	**Mrs. Lottie Hollier**
Clerk	**Mrs. Rebecca Leon**
Clerk	**Mrs. C. B. Buddecke**
Precinct 52 & 53	***2501 Ninth Street***
Presiding Judge	**James L. Chelette**
Assistant Judge	**Mrs. James L. Chelette**
Clerk	**Paul Jordan**
Clerk	**Mrs. Paul Jordan**
Clerk	**Mary Raggio**
Clerk	**Mrs. Wynona Petite**

Precinct 54	*Woodrow Wilson Junior High School 1500 Lakeshore Drive*
Presiding Judge	Mrs. T. H. Ridout
Assistant Judge	T. H. Ridout, Jr.
Clerk	Bernice Moore
Clerk	Georgia Thompson
Clerk	Dora Eaton
Precinct 55	*Franklin School, 10th St. & Mobile Avenue*
Presiding Judge	Mable Alexander
Assistant Judge	Helen Milton
Clerk	Willie B. Ford
Clerk	Angela Francene Hardie
Clerk	Wanda Gant
Precinct 57	*City Hall, 444 Fourth Street, Lobby*
Presiding Judge	Mrs. Clevester Godfrey
Assistant Judge	Mrs. Lillie Lofton
Clerk	Mrs. Adam Stelly
Clerk	Nina Gail Stelly
Clerk	Annie Jones
Precinct 58	*Former West Side Library, 740 W. Seventh St. (J. B. Matthews Activity Building)*
Presiding Judge	Mrs. Rebecca T. Martin
Assistant Judge	Marjiree Allen
Clerk	Gloria Ann Alford
Clerk	Velma Ruffin
Clerk	Marteal Bell
Precinct 59	*Grannis Ave. Fire Station, 1151 Grannis*
Presiding Judge	Elsie Frilot
Assistant Judge	Mrs. Lucille Johnson
Clerk	Gertrude James
Clerk	Lillian LeBlanc
Clerk	Ransom Strawder
Clerk	Mildred C. Taville

Precinct 70	***Port Arthur Public Library, 3601 Cultural Center Drive***
Presiding Judge	**Mrs. Sally Jackson**
Assistant Judge	**Juanita Slaughter**
Clerk	**Mrs. Walter Hayes**
Clerk	**Nita Ham**
Clerk	**LaMerle Bonds Evans**
Clerk	**Evelyn Fontenot**
Precinct 71	***Taft Elementary School, 2500 Taft Ave.***
Presiding Judge	**Judy Mayeaux**
Assistant Judge	**Vernon Miller**
Clerk	**Mrs. Vernon Miller**
Clerk	**Mrs. Blanche Jordan**
Clerk	**Loretta Hebert**
Precinct 76	***Thomas Jefferson High School, 2200 Jefferson Drive***
Presiding Judge	**Virginia Moore**
Assistant Judge	**Mayme Ryan**
Clerk	**Mrs. Howard Simon**
Clerk	**Mrs. Mamie Lipo**
Clerk	**Doris Lasseigne**
Clerk	**Dale Piletere**
Precinct 81	***Water Utilities Warehouse, 1601 - 19th St.***
Presiding Judge	**Mrs. Gordy Moss**
Assistant Judge	**Mrs. Leona Gillard**
Clerk	**Mrs. A. B. Cantu**
Clerk	**Dorothy Joubert**
Clerk	**Mr. A. B. Cantu**

CERTIFICATION

THE STATE OF TEXAS
COUNTY OF JEFFERSON

I, Carolyn Dixon, City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of Ordinance 81-94 as the same appears of record in my office in the City Hall at Port Arthur, Texas; and that I am the lawful possessor and custodian of said Ordinance.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 5th day of January, A.D., 1982.

/s/ CAROLYN DIXON
City Secretary of the City
of Port Arthur, Texas

(SEAL)

ORDINANCE NO. 81-94

An Ordinance Canvassing Returns of a Special (Runoff) Election Held the First Day of December, 1981, for the Purpose of Electing a Mayor and Two Councilmen From Districts Three and Four; Declaring Results of Elections of November 3, 1981, and December 1, 1981, and of the Drawing for Positions 7 and 8 of the City Council; and Providing the Effective Date Hereof.

WHEREAS, on November 3, 1981, a Special Election was held for the purpose of electing a Mayor and six Councilmen in accordance with the Charter of the City of Port Arthur, the provisions of the Texas Election Code, and Order of the United States District Court for the Eastern District of Texas, dated August 3, 1981, and said Special Election was canvassed by Ordinance No. 81-86 on November 9, 1981, whereby the positions of Mayor and Councilmen from Districts 3 and 4 were subject to a runoff election; and,

WHEREAS, on August 24, 1981, at 11:00 o'clock a.m., a drawing was held for Positions 7 and 8 to determine who would fill those positions; and,

WHEREAS, in accordance with the Charter of the City of Port Arthur and the Texas Election Code, a Special Election (Runoff Election) was held on Tuesday, the 1st day of December, 1981, in the 21 Precincts into which the City of Port Arthur is divided for voting purposes, for the purpose of allowing the voters to elect a Mayor and one Councilman from Districts 3 and 4; and,

WHEREAS, the sealed returns of said Elections have been duly made to the City Council of the City of Port Arthur, and by the City Council examined and counted; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. The sealed returns of said Special Election (Runoff Election) after being examined and counted by the City Council, are found and declared to be true and

correct. There were cast at said Election for the respective candidates the number of votes shown by the following tabulated statements, to-wit:

MAYOR

PRECINCTS	32	33	34	45	46	47&51	48	49	50
Bernis W. Sadler	42	541	22	576	904	752	469	537	401
Frederick Johnson	87	295	731	54	102	121	59	116	383

PRECINCTS	52&53	54	55	57	58	59	70	71	76
Bernis W. Sadler	111	39	16	31	32	36	482	160	409
Frederick Johnson	552	245	378	243	743	888	62	31	70

PRECINCTS	81	ABS.	TOTAL
Bernis W. Sadler	51	2021	7632
Frederick Johnson	381	330	5871

COUNCILMAN DISTRICT 3

PRECINCTS	45	46	47&51	70	ABS.	TOTAL
Vernon D. Castille	298	389	299	298	539	1823
Charles L. Rhodes, Jr.	307	607	522	226	374	2036

COUNCILMAN DISTRICT 4

PRECINCTS	33	34	59	81	ABS.	TOTAL
George W. Lacey	542	265	328	170	184	1489
Ronald Spooner	266	478	557	250	133	1684

Section 2. The City Council has determined that said Special Election (Runoff Election) of December 1, 1981, and the Election of November 3, 1981, were duly called, ordered, and held in accordance with the Laws of the State of Texas, and the City's Charter; that the Ordinance or-

dering the Elections, and the Returns thereof, have been made by the proper officials; and, that the Election (Runoff) of December 1, 1981, resulted in the election of Bernis W. Sadler, Mayor; Charles L. Rhodes, Jr., District 3; and Ronald Spooner, District 4; and, that the Election of November 3, 1981, as canvassed by Ordinance No. 81-86, resulted in the election of Arthur Craft, District 1; Maurice Conerly, District 2; Walter Mosely, District 5; and Malcolm Clark, District 6. Premises considered, the aforementioned persons are hereby declared to be elected as Mayor and City Councilmen of the City of Port Arthur, Texas. That Arthur J. Guidry and Ray Bernard who drew positions for Positions 7 and 8 respectively, are hereby declared to be Councilmen for those respective Positions.

Section 3. This being an Ordinance not requiring publication, the same shall take effect and be in force immediately from and after its passage.

READ, ADOPTED, AND APPROVED this 7th day of December, A.D., 1981, at a Regular Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES: Mayor Sadler, Councilmen Conerly, Guidry, Clark, James & Bernard; NOES: None.

/s/BERNIS W. SADLER
Bernis W. Sadler, Mayor

ATTEST:

/s/ CAROLYN DIXON
Carolyn Dixon, City Secretary

APPROVED AS TO FORM:

/s/ GEORGE WIKOFF
George Wikoff, City Attorney

CITY OF PORT ARTHUR
COUNTY OF JEFFERSON

AFFIDAVIT OF CAROLYN DIXON, CITY SECRETARY OF CITY OF PORT ARTHUR

Carolyn Dixon, having been duly sworn, deposes and says:

1. My name is Carolyn Dixon. I am City Secretary of the City of Port Arthur.

2. Before me appeared each of the candidates in the city council interim election held on November 3, 1981, with the exception of Ronnie Thompson, a write-in candidate, who is personally known to me.

3. The race of each candidate is as follows. The winner of each seat is designated *; where there was a run-off, those in the run-off are designated **.

Mayor

Bernis W. Sadler—white ***
Edna Barbour—white
Robert "Whitey" Carr—white
Billy Joe Murphy—white
Joseph J. Gauthier—white
Frederick Johnson—black **
Ronnie Thompson—white

Councilman District 1

Earl Helmick—white
Arthur Craft—black *
Willie Lewis, Jr.—black

Councilman District 2

Pat Branson—white
Maurice Conerly—white *

Councilman District 3

Mark Woodall—white
Vernon D. Castille—white **
Charles L. Rhodes, Jr.—white ***
J. C. Schmidt—white

Councilman District 4

Terry Blevins—white
Ronald Spooner—black ***
Sib Greer—white
Aubrey Steve Felder—white
George W. Lacey—black **

Councilman District 5

Walter Mosely—black *
James Green—black
Cherry L. Ebeling—white
Ike Linden—black

Councilman District 6

Malcolm Clark—white *
Mark Woodall—white

/s/ _____
Carolyn Dixon,
City Secretary

On this 7th day of January 1982, Carolyn Dixon appeared before me and, having been duly sworn, executed the foregoing affidavit.

/s/ _____
Notary Public in and for
Jefferson County, Texas

Appellee's Brief

1

Office - Supreme Court, U.S.
FILED
JUN 3 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-708

In the Supreme Court of the United States

OCTOBER TERM, 1981

CITY OF PORT ARTHUR, TEXAS, APPELLANT

v.

UNITED STATES OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

REX E. LEE
Solicitor General

WM. BRADFORD REYNOLDS
Assistant Attorney General

LAWRENCE G. WALLACE
Deputy Solicitor General

CARTER G. PHILLIPS
Assistant to the Solicitor General

JESSICA DUNSAY SILVER
MARIE E. KLIMESZ
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether the district court reasonably conditioned approval of a mixed at-large and single member district plan for electing city council members, submitted jointly by appellant and the United States under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, on a requirement that the election of the two at-large council members should be decided on a plurality, as opposed to majority, vote in order to neutralize the adverse racial impact caused by appellant's territorial expansion.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Summary of argument	11
Argument:	
I. The district court correctly conditioned preclearance of the city's territorial expansion upon modification of its proposed election plan in order to provide blacks in the enlarged community a fair opportunity to influence the outcome of elections for the two non-mayoral at-large positions	14
A. In reviewing an electoral plan designed to eliminate the dilutive effect on minority voting of a city's annexation, the district court sits as a court of equity with authority to condition preclearance on the modification of any part of the plan it reasonably concludes has a discriminatory effect or purpose	14
B. In its June 12, 1981 opinion, the district court found the City's use of at-large elections with a majority vote requirement in prior electoral plans had both a discriminatory purpose and a discriminatory effect	21
C. Appellant is incorrect in asserting that the plan approved by the district court goes beyond what is required under this Court's decision in *City of Richmond*	27
II. The district court did not err in reviewing independently the city's electoral plan even though the United States had agreed to settle the litigation on the basis of that plan	29
Conclusion	31

TABLE OF AUTHORITIES

Cases: Page

Allen v. *State Board of Elections*, 393 U.S. 544.... 30
Beer v. *United States*, 425 U.S. 130 25
City of Petersburg v. *United States*, 354 F. Supp. 1021, aff'd, 410 U.S. 962 .....7, 15, 25
City of Richmond v. *United States*, 376 F. Supp. 1344, rev'd on other grounds, 422 U.S. 358.....*passim*
City of Rome v. *United States*, 472 F. Supp. 221, aff'd, 446 U.S. 156 .....*passim*
Hecht v. *Bowles*, 321 U.S. 321 ..... 13, 17
Mosely v. *Sadler*, No. B-78-69-CA (E.D. Tex. Mar. 27, 1978) 5
Perkins v. *Matthews*, 400 U.S. 379 ..... 11, 15
Reynolds v. *Sims*, 377 U.S. 533 15
South Carolina v. *Katzenbach*, 383 U.S. 301.....12, 16-17, 26-27, 30
Swann v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 17
United Jewish Organizations v. *Carey*, 430 U.S. 144 20
Wright v. *Rockefeller*, 376 U.S. 52 20

Statutes and regulations:

Voting Rights Act of 1965, Section 5, 42 U.S.C. 1973c .....*passim*
39 Tex. Jur. 2d, Rev., Municipal Corporations (1976):
§§ 61 *et seq.* 4
§§ 96-97 4
28 C.F.R. 51.18-51.26 30
28 C.F.R. 51.39 30

Miscellaneous:

Civil Rights Commission, *The Voting Rights Act: Ten Years After* (Jan. 1975) 15
121 Cong. Rec. (1975):
p. 16248 15
p. 16251 ..... 15, 19

Miscellaneous—Continued Page

p. 16277 15
p. 16278 19
p. 16280 19
p. 16288 19
p. 16881 19
pp. 16911-16912 19
p. 16915 19

Extension of the Voting Rights Act: Hearings on H.R. 939, etc., Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 94th Cong., 1st Sess. (1975) 19

Extension of the Voting Rights Act of 1965: Hearings Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary, 94th Cong., 1st Sess. (1975) 19, 29

H.R. Rep. No. 89-439, 89th Cong., 1st Sess. (1965) 27

H.R. Rep. No. 94-196, 94th Cong., 1st Sess. (1975) 12, 15, 19

Roman, *Section 5 of the Voting Rights Act: The Formation of an Extraordinary Federal Remedy*, 22 Am. U.L. Rev. 111 (1972) 30

S. Rep. No. 89-162 (Pt. 3), 89th Cong., 1st Sess. (1965) 27

S. Rep. No. 94-295, 94th Cong., 1st Sess. (1975) 12, 15, 16, 18-19

In the Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-708

CITY OF PORT ARTHUR, TEXAS, APPELLANT

v.

UNITED STATES OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The June 12, 1981, opinion of the district court (J.A. 1a-75a) is reported at 517 F. Supp. 987. The July 14, 1981, order of the district court (J.A. 87a-88a) is not reported.

JURISDICTION

The order of the district court (J.A. 87a-88a) was entered on July 14, 1981. The notice of appeal (J.A. 89a) was filed on July 21, 1981. The appeal was docketed on October 13, 1981, and this Court noted probable jurisdiction on January 25, 1982. The jurisdiction of this Court is invoked under 42 U.S.C. 1973c.

STATEMENT

1. The facts of this case are described at length in the June 12, 1981, opinion of the district court (J.A. 4a-44a). The City of Port Arthur is located in the southeastern portion of Texas. While the total population of the city decreased between 1960 and 1980 (from 66,676 to 54,485), the percentage of that population comprised by blacks increased over the same period (from 30.79% to 45.21%) (J.A. 5a-7a).[1]

From 1954 to 1963, the City had a commission-manager form of government. Seven commissioners were elected from single-member districts, and the commission then chose one of its members to serve as mayor (J.A. 8a). The districts from which commissioners were elected were drawn along north-south lines (*ibid.*). The district to the west of Houston Avenue contained the highest concentration of blacks, and a black commissioner was elected from that district each year between 1954 and 1963 (J.A. 9a). By 1960, it appeared that a second district, east of Houston Avenue, would become predominantly black (*ibid.*). When the form of government was altered in 1963, three of the residency districts were redrawn along east-west lines thus fragmenting the growing black population by combining black residential areas with white ones (J.A. 10a-11a).

Since 1963, the City has been governed by a seven-member council, elected at-large by majority vote (J.A. 9a-10a). The six non-mayoral council members are required to reside in specific districts; no residency requirements apply to the mayoral position (*ibid.*). The mayor has the right to cast a vote on each issue coming before

---

[1] Between six and seven percent of the City's population is composed of Mexican-Americans (J.A. 7a). In using census data to calculate the percentage of the population comprised by whites, the court assumed that the Mexican-Americans had also been included within the "white" category and therefore subtracted them, as well as blacks, from the total population to arrive at the figure for whites (J.A. 5a-7a n.5, 23a n.30).

the council, but he also assumes certain ceremonial responsibilities unique to his office (J.A. 10a). Members of the council are elected for two-year terms; three are elected in one year, and the remaining three and the mayor are elected the following year (*ibid.*). One black councilman, an incumbent from the pre-1963 single-member district system, has been elected continuously since 1963 (J.A. 40a). He has never faced a white opponent. In recent years, however, he has not been the choice of the black voters in Port Arthur (*ibid.*).

A high level of racial tension has existed in the City since December 29, 1974, when a white policeman shot a black youth who was escaping from police custody (J.A. 12a). The effects of the increased racial tension were felt dramatically in the campaign preceding the April 1977, councilmanic elections (J.A. 13a). As part of their campaign against the slate of black candidates, members of the City Council placed full-page advertisements in the local newspaper warning that a black minister from outside Port Arthur was attempting "to rally the local black community to gain control of the city government" (*ibid.*). The election results showed a high degree of racial bloc voting, and the black candidates lost every race by a narrow margin (J.A. 14a, 177a-178a).

In April 1977, following these racially polarized councilmanic elections, the City began actively pursuing consolidation with neighboring communities (J.A. 14a-16a). Racial considerations (linked to concern—created by the 1977 councilmanic elections—that blacks were becoming an increasingly powerful political force in the City) provided the incentive for the increased drive for consolidation (J.A. 66a-67a). As a result, the neighboring cities of Pear Ridge and Lakeview were consolidated with Port Arthur on December 1, 1977, following referenda elections in Port Arthur and in each of the other communities (J.A. 14a-22a, 180a-182a). According to the 1980 Census, Pear Ridge and Lakeview contributed 6,008 people, only 80 of whom were black (J.A. 22a). Of the total

population of the enlarged city, the added areas contained 16% of the whites and less than 1% of the blacks (J.A. 23a). Approximately six months after consolidation with Pear Ridge and Lakeview, the City annexed an unincorporated area known as Sabine Pass (J.A. 25a).[2] The annexed area contributed 501 persons, according to the 1980 census, of whom 31 were black and 18 were Hispanic (*ibid.*). The effect of both expansions was to decrease the percentage of the total population in Port Arthur that was black from 45.21% to 40.56% (J.A. 6a).

During the next three years, the City considered several new electoral plans that would take into account the newly added territory. An advisory committee, established in November 1977, divided along racial lines on the question whether to keep the at-large system of election or to return to the pre-1963 single member district system (J.A. 23a-24a). The recommendation of the predominantly white majority of the committee, which was adopted by ordinance on January 16, 1978, provided for the addition of an eighth councilmember and retained the at-large system with residency requirements (the "7-0-1" plan)[3] (J.A. 24a). A minority report, filed by five of the seven black members of the committee, proposed a single-member district plan, but it was not read at the public hearings on the recommended plan (*ibid.*).

---

[2] Under Texas law, incorporated cities join together by the process of consolidation. Unincorporated areas, however, may be annexed by municipalities authorized to do so by law. Consolidation requires the consent of the voters of each area. Annexation may be accomplished even over the protest of residents of either community. See generally 39 Tex. Jur. 2d, Rev., Municipal Corporations §§ 61 *et seq.* and 96-97 (1976).

[3] We adopt here the shorthand reference system used by the district court for describing the various electoral plans. The "7" refers to seven at-large council seats, the "0" to the fact that no members were to be elected from single-member districts, and the "1" to the seat held by the mayor.

On January 21, 1978, the City submitted the 7-0-1 plan to the Attorney General for preclearance under Section 5 of the Voting Rights Act (J.A. 41a-42a). The Attorney General interposed a timely objection to the plan because it did not sufficiently neutralize the dilution of black voting strength caused by the consolidation with Pear Ridge and Lakeview (J.A. 42a). The Attorney General expressly offered, however, to reconsider his objection should the City change its plan to elect the council members from "fairly-drawn single-member districts" (*ibid.*).[4]

On February 5, 1980, the City requested the Attorney General to reconsider his objection to the 7-0-1 plan (J.A. 42a). At the same time the City requested preclearance of the annexation of Sabine Pass and a new election plan that enlarged the City Council to nine members, elected at-large by majority vote and with residency requirements (the "8-0-1" plan) (J.A. 26a, 42a).[5] The Attorney General denied the request to reconsider his objection to the 7-0-1 plan and objected to the 8-0-1 plan because the City had not adopted single-member districts. The Attorney General also objected to the annexation of Sabine Pass because that action "exacerbated the dilution of minority voting strength caused by the earlier consolidation" (J.A. 42a-43a).

2. On March 12, 1980, the City filed the instant suit in the United States District Court for the District of Columbia seeking a declaratory judgment under Section 5 of the Voting Rights Act that the 8-0-1 plan did not have the purpose and will not have the effect of denying or abridging the right to vote on account of race

---

[4] The City's attempt to implement the voting changes adopted in conjunction with the consolidation, while the request for preclearance was pending, was challenged by black voters. A three-judge court in Texas enjoined implementation. *Mosely* v. *Sadler*, No. B-78-69-CA (E.D. Tex. Mar. 27, 1978) (J.A. 42a).

[5] The residency districts were drawn so as to create two predominantly black districts, with a third projected to become majority black by 1984 or 1985 (J.A. 26a).

or color. The United States was named as defendant and, in addition, four black residents of Port Arthur were permitted to intervene as defendants.

While the suit was pending, the City accepted the offer of the Community Relations Service of the United States Department of Justice to mediate the dispute. The City chose an all-white team to represent it in negotiations, and, as the district court found (J.A. 28a), "there is some evidence to suggest that members of the City's team perceived their role as representing the white citizens of Port Arthur." A group of black citizens formed a team to represent the black community (*ibid.*). The white team proposed, as a "bottom line," a nine-member council with the mayor elected at-large, four members elected from single-member districts and four members to be elected at-large from residency districts identical to the single-member districts (the "4-4-1" plan) (J.A. 29a-30a). The black team rejected the 4-4-1 plan as failing to provide the minority community representation commensurate with its political strength (J.A. 31a).[6]

Thereafter, a committee from the City's team, using city resources, organized a petition drive to have the 4-4-1 plan placed on a special ballot as an alternative to a plan that had been proposed by the City firefighters[7] in a special referendum election (*ibid.*). The campaign waged by the committee emphasized the racial breakdown of support for the two plans and reminded voters to "keep our city government in the hands of *all* people" (J.A. 31a-32a) (emphasis in original). The results of the referendum election showed significant racial polar-

---

[6] At the time the plan was formulated, the City's demographer estimated that the four districts would be 84.23%, 12.48%, 06.85%, and 63.95% black.

[7] The firefighters' plan called for six members of a nine-member council to be elected from single-member districts, with the mayor and the two remaining council members to be elected at-large (the "2-6-1" plan) (J.A. 27a). The firefighters successfully petitioned to have this proposal placed on the special referendum ballot.

ization, with the 4-4-1 plan being adopted by a majority of the voters (J.A. 32a).[8] On September 15, 1980, the city moved to amend its complaint, seeking a declaratory judgment that the newly approved 4-4-1 plan did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color (J.A. 44a).

3. The district court, relying on the decisions in *City of Petersburg* v. *United States*, 354 F. Supp. 1021 (D.D.C. 1972), aff'd, 410 U.S. 962 (1973), and *City of Richmond* v. *United States*, 422 U.S. 358 (1975), concluded that the expansion of Port Arthur "significantly altered the racial balance in the City" (J.A. 52a), and that none of the electoral plans proposed by the City afforded black voters "the requisite opportunity to achieve representation commensurate with their voting strength in the enlarged community" (J.A. 54a). The court found that blacks comprise 40.56% of the population of the enlarged city, and approximately 35% of the voting-age population, but the combination of racial-bloc voting with both a majority vote and a residency requirement would prevent black voters from having an influence over the election under either the 8-0-1 or the 4-4-1 plan anywhere near their strength in the enlarged city (J.A. 54a-58a, 62a).[9] The court also found that in-

---

[8] The United States sought to enjoin the referendum election before a three-judge court in the Eastern District of Texas on the ground that the City wanted to implement the voting changes occasioned by the unprecleared consolidation and annexation. That court permitted the election to proceed, however, and, on September 5, 1980, allowed the city to certify the city charter amendment for the "*sole* and *limited* purpose of complete submission" of the amendment to the court below in which the city's declaratory judgment action concerning the 8-0-1 plan was then pending. *United States* v. *City of Port Arthur*, C.A. No. B-80-216-CA (E.D. Tex.) (emphasis in original) (J.S. App. 43a-44a).

[9] The court also concluded that the 6-0-1 plan, which preceded the expansion, would fail to insure the black community an opportunity to obtain representation commensurate with its voting strength in the enlarged community (J.A. 62a-63a).

stead of producing elected officials who are responsive to the needs of the entire city, the at-large system resulted in white council members, elected by racial bloc voting, who are wholly inattentive to the needs of black citizens in the areas of municipal employment and city services (J.A. 55a). The court therefore found that both the 4-4-1 and the 8-0-1 plan had the effect of denying or abridging the right to vote on account of race.

In addition, the district court noted several "indicia of an original discriminatory purpose" (J.A. 67a) behind the expansion of Port Arthur's boundaries, demonstrating "a desire to abridge the electoral rights of the black population" (J.A. 66a). The district court concluded (J.A. 67a-68a), however, that there were legitimate purposes behind the annexation and consolidation and therefore they were not precluded from receiving preclearance under Section 5 as being improperly motivated. See *City of Richmond* v. *United States*, *supra*, 422 U.S. at 378-379.

With regard to whether the voting changes the City submitted had an impermissible purpose, the court concluded that both the 4-4-1 and 8-0-1 plans were adopted with an "invidious motive" (J.A. 70a). The court summarized the evidence leading to this conclusion as follows (*ibid.*):

> [T]he specter of discrimination was raised by the 1963 redrawing of district lines, and its continued existence was marked by the April 1977, campaign advertisements. The severely polarized councilmanic election results then sparked a mysteriously sudden push for expansion which significantly diminished black voting strength. Rather than neutralizing the effect of this dilution, City officials devised the 8-0-1 and 4-4-1 plans which guaranteed that blacks would remain underrepresented on the City Council by comparison to their numerical strength in the enlarged community. Because of this invidious motive, we condemn the voting plans.

The City offered several justifications for the two plans, all of which the court found to be "pretextual" and "specious" (J.A. 71a-72a). The court found that enlargement of the council and imposition of residency requirements could not have the purported purpose of enhancing representation of the minority community because of the severe racial polarization in voting (*ibid.*).[10] It also found that, while at-large elections often produce representatives who are more responsive to the interests of a city as a whole rather than to those of a particular district, in this case the at-large council members have been wholly unresponsive to the interests of minority citizens (J.A. 72a-73a). Finally, the court found that any alleged intention to increase minority representation by the 4-4-1 plan was "overriden [*sic*] by the desire of white Port Arthurians to maintain undisputed control of the municipal government" (J.A. 72a). The City did not appeal from the district court's June 12, 1981 decision.

4. Subsequent to the district court's June 12, 1981, decision, which conditioned approval of the expansions upon an electoral system designed to provide the requisite representation to black voters, the City on June 29, 1981, submitted an amended plan in a Report to the Court. After negotiations, however, the City and the United States jointly submitted a new plan on July 8, 1981, which provided for six single-member dis-

---

[10] The court also found that any suggestion that an at-large system would enhance the position of Mexican-Americans was based upon the false assumptions that Hispanics were evenly distributed throughout the City and that whites would support a Mexican-American candidate out of a sense of fairness (J.A. 72a). Given that the City had amended its charter to permit a change in the electoral system, the court also rejected the City's contention that it was without power to change from an all at-large system (*ibid.*). The court also found "quite tenuous" the suggestion that Port Arthur residents continued to associate the single-member district system with the corruption that was present under the ward system of the 1950's (*ibid.*).

trict seats and three at-large seats (the "4-2-3" plan)[11] (J.A. 79a). The plan provided for four single-member districts, in two of which blacks constituted a majority (79% and 62.78% black), and the plan also combined the two majority black districts into a fifth single-member district (70.83% black) and the two remaining districts into a sixth district (10.98% black)[12] (*ibid.*; City of Port Arthur's Report to the Court Pursuant To Order of June 12, 1981 (filed June 29, 1981)). The fifth and sixth districts would serve as residency districts for the two non-mayoral, at-large seats, and the mayor would be elected at-large with no residency requirement (*ibid.*). All elections would be by majority vote (*ibid.*).

The United States expressed reservations about the continued use of the at-large feature and about the majority vote requirement (J.A. 80a-81a). Acknowledging the district court's conclusion in its June 12 opinion that "the black population effectively has no opportunity to elect at-large council members," the United States nonetheless concluded that the ability of the black community to influence the outcome of three single-member seats lessened the discriminatory impact of the remaining at-large feature (J.A. 80a). The United States also expressed a distinct preference for a plurality win provision for the at-large seats in order to increase the possibility of minority influence, but concluded that the City's refusal to incorporate such a provision did not justify denying preclearance of the entire plan (J.A. 81a). Intervenors also expressed their reservations about the continued use of the at-large seats and, in addition, asserted that "[s]ubstituting a plurality requirement for three or even two of the at-large positions in the plan would allow the City to exercise all legitimate political

---

[11] Reference to this plan as the "4-2-3" plan, which deviates from the system explained page 4 note 3, *supra*, is necessary in order to distinguish it from the "2-6-1" plan discussed previously, see page 6 note 7, *supra*.

[12] The majority white districts which form the sixth district are 18.13% and 3.99% black.

and governmental prerogatives while affording the black population an opportunity to influence the election of the three at-large council people" (J.A. 84a).[13]

The district court accepted the bulk of the City's "4-2-3 plan," but, with one judge dissenting on this point, conditioned its preclearance on a plurality vote requirement in the election of the two non-mayoral, at-large councilmanic positions (J.A. 87a-88a). The district court stated that the proposed plan "insufficiently neutralizes the adverse impact upon minority voting strength which resulted from the expansion of Port Arthur's borders" (J.A. 87a).

SUMMARY OF ARGUMENT

I. A. The United States District Court for the District of Columbia plays an extraordinary role in implementing Section 5 of the Voting Rights Act; without its express approval (or preclearance by the Attorney General), no "standard, practice, or procedure with respect to voting" can be implemented by any jurisdiction covered by the Act. 42 U.S.C. 1973c. Although the district court's responsibilities under Section 5 are generally "heavy," *City of Richmond* v. *United States*, 376 F. Supp. 1344, 1346 (D.D.C. 1974), rev'd on other grounds, 422 U.S. 358 (1975), nowhere are they more substantial than in reviewing the validity of annexations of predominantly white areas by political subdivisions subject to the Act. See *City of Richmond* v. *United States*, 422 U.S. 358 (1975); *Perkins* v. *Matthews*, 400 U.S. 379 (1971).

Annexations pose a unique problem because they are not per se impermissible even if they will have a clear dilutive effect on minority voting strength. See *City of Richmond* v. *United States*, *supra*, 422 U.S. at 374-375, 378. Instead, the annexation should be precleared if supported by non-racial justifications and if a new voting

[13] Two intervenors objected to the plan, but two others, with reservations, accepted the plan "in light of the Justice Department's acquiescence" and the need to have a new City Council elected without undue delay (J.A. 84a).

plan for the new community "fairly reflects the strength of the Negro community as it exists after the annexation." *Id.* at 371.

In attempting to ease the litigating burden on the cities subject to the Act, the district court has been invested with the "remedial device" of conditioning preclearance on modifications in the city's voting plan. See *City of Rome* v. *United States*, 446 U.S. 156, 188 (Blackmun, J., concurring). See also *City of Richmond* v. *United States*, *supra*, 422 U.S. at 370. In exercising this remedial authority, the district court must consider every aspect of the plan to assure that there are no subtle discriminatory purposes or effects, masked by an otherwise facially valid plan, that will cause the plan to undervalue the voting strength of the minority population in the expanded community. Cf. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 335 (1966). The district court's authority to consider all facets of the plan is well supported by the legislative concern, expressed in 1975 when the Voting Rights Act was extended to cover Texas, that historically subtle forms of discrimination had been practiced to guarantee that minorities could never obtain any real political power in Texas communities. See S. Rep. No. 94-295, 94th Cong., 1st Sess. 27-28 (1975); H.R. Rep. No. 94-196, 94th Cong., 1st Sess. 18-19 (1975).

It cannot be the rule, as appellant contends, that a district court exclusively commissioned to protect against attempts to dilute black voting strength is permitted to consider no more than whether the black community has obtained arguably proportional representation. Such a showing can be sufficient in a proper case; but where the district court has found two previous plans to be blatantly discriminatory in purpose and effect, it is justified in examining the newest proposal carefully to make sure that it does not carry forward discrete features that previously had been found offensive. If such features appear, and the record supports a finding that such features violate the Act when incorporated as a part of the overall plan, then, as a court of equity, it has full authority

to condition preclearance on modification of those features.

B. In this case the district court had specifically found, and its finding has never been challenged by appellant, that "black voters of the City essentially have *no role* in determining the outcome of the * * * at-large election[s]" (J.A. 57a; emphasis added). This lack of any influence on the outcome has allowed at-large representatives to be wholly unresponsive to black interests in Port Arthur (J.A. 35a-36a). Thus, although the plan generally goes far toward providing blacks a fair opportunity to influence the outcome in these districts, the retention of the at-large feature still would dilute voting strength by freezing blacks out of the electoral process for two pivotal seats. The district court, however, recognized the public interest in at-large seats and allowed the City to retain them; it found no similar public interest in the majority vote requirement and ordered it modified to protect the minority's legitimate interest in having some influence on those elections. The district court thus properly exercised its equitable discretion in making this simple modification in the City's overall plan. See *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329-330 (1944).

C. Nothing in the district court's decision conflicts with this Court's decision in *City of Richmond* v. *United States*, *supra*. In *Richmond* this Court held that it is improper to condition approval of an annexation on a requirement that minority voting strength be commensurate with pre-annexation population strength, which would lead to over-representation of the minority group. This Court did not limit the district court to making a mathematical decision as to whether a particular plan was adequate to protect against dilution of minority voting rights. Compare *City of Rome* v. *United States*, *supra*, 446 U.S. at 187. In addition, the district court's decision in this case will not overvalue minority rights, but instead will merely give blacks an opportunity to have influence commensurate with their voting strength over whatever candidate is elected at-large to the city council in Port Arthur.

II. The 4-2-3 plan submitted to the District Court was joined by the United States as a party-litigant seeking a reasonable resolution of a protracted litigation. Focusing largely on the three single-member seats that blacks could reasonably influence, we concluded that the plan probably satisfied *City of Richmond* and the district court's prior concerns. The district court, focusing on the at-large seats that blacks could not influence, and about which we expressed serious reservations, concluded that the plan required a modification of the majority-vote requirement for those seats. Having agreed to submit the plan to the district court, both parties expected it to review the plan and approve it only if it were convinced that no dilution of the black vote continued. Based on the legitimate concern the court had with the unusual effect of the at-large seats with a majority-vote requirement on black voting strength in Port Arthur, it was not improper for the court to decline to rubber stamp the plan containing two such seats.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY CONDITIONED PRECLEARANCE OF THE CITY'S TERRITORIAL EXPANSION UPON MODIFICATION OF ITS PROPOSED ELECTION PLAN IN ORDER TO PROVIDE BLACKS IN THE ENLARGED COMMUNITY A FAIR OPPORTUNITY TO INFLUENCE THE OUTCOME OF ELECTIONS FOR THE TWO NON-MAYORAL, AT-LARGE POSITIONS

A. In Reviewing An Electoral Plan Designed To Eliminate The Dilutive Effect On Minority Voting Of A City's Annexation, The District Court Sits As A Court Of Equity With Authority To Condition Preclearance On The Modification Of Any Part Of The Plan It Reasonably Concludes Has A Discriminatory Effect Or Purpose

It is well settled that the requirements of Section 5 of the Voting Rights Act must be satisfied when a political subdivision, such as the City of Port Arthur, expands its territorial boundary. *City of Rome* v. *United States*,

446 U.S. 156, 187 (1980); *City of Richmond* v. *United States*, 422 U.S. 358, 367-368 (1975); *City of Petersburg* v. *United States*, 410 U.S. 962 (1973), aff'g, 354 F. Supp. 1021 (D.D.C. 1972); *Perkins* v. *Matthews*, 400 U.S. 379, 390-391 (1971). Application of the extraordinary requirements of Section 5 to annexations is justified because acquisition of surrounding communities, if predominantly white, can have either an intended or unintended dilutive effect on the minority's right to vote. See *Perkins* v. *Matthews*, *supra*, 400 U.S. at 390.[14] As this Court recognized in *Perkins*, annexation can deny the right of suffrage "just as effectively as by wholly prohibiting the free exercise of the franchise." 400 U.S. at 388, quoting *Reynolds* v. *Sims*, 377 U.S. 533, 555 (1964).

Majority black populations, such as those in Richmond and Petersburg, Virginia, can be reduced to minorities overnight with an obvious corresponding loss of voting power. See *City of Richmond* v. *United States*, *supra*, 422 U.S. at 372; *City of Petersburg* v. *United States*, *supra*, 354 F. Supp. at 1024. Of equal concern, growing minority populations carrying the potential for the first exercise of real political power can be thwarted irreparably by annexations unless modifications are made in the electoral scheme to neutralize the dilutive effect of the boundary change. *City of Rome* v. *United States*, *supra*,

---

[14] When it extended the Voting Rights Act in 1975 for an additional 7 years, Congress was painfully aware of this phenomenon. In describing the "continuing need for this preclearance mechanism" the Senate Report observed:

> As registration and voting of minority citizens increases, other measures may be resorted to which would dilute increasing minority voting strength. Such other measures may include switching to at-large elections, [and] *annexations* of predominantly white areas * * *.

S. Rep. No. 94-295, 94th Cong., 1st Sess. 16 (1975) (emphasis added), citing Civil Rights Commission, *The Voting Rights Act: Ten Years After* 204-207 (Jan. 1975). See also H.R. Rep. No. 94-196, 94th Cong., 1st Sess. 10 (1975); 121 Cong. Rec. 16248, 16251 (1975) (Rep. Edwards); *id.* at 16277 (Rep. Roybal).

446 U.S. at 186-187; S. Rep. No. 94-295, 94th Cong., 1st Sess. 16 (1975).

Because annexations involve complex social, economic and political issues that may determine the very ability of a city to exist, however, they are not treated the same as other electoral practices subject to Section 5 of the Voting Rights Act. See *City of Richmond* v. *United States*, *supra*, 422 U.S. at 374-375, 378. Even when the political subdivision is unable to prove that no part of the purpose or effect of the annexation was to impair minority voting strength, the annexation itself is not per se impermissible, so long as there are legitimate, non-racial reasons for the territorial expansion and the new city's electoral scheme incorporating the annexed region is designed to "fairly reflect[] the strength of the Negro community as it exists after the annexation * * *." *City of Richmond* v. *United States*, *supra*, 422 U.S. at 371.

The latter inquiry could lead to endless litigation but for the adoption of the practice, expressly approved by this Court, of having the district court condition preclearance under Section 5 upon specific modifications in the electoral plan proposed by the political subdivision. See *City of Richmond* v. *United States*, *supra*, 422 U.S. at 370.[15] The judicial process of suggesting modifications in a plan so that an otherwise improper annexation can be converted into an electoral change that is permissible under Section 5 of the Voting Rights Act, requires a careful balancing of the various interests involved with the paramount concern being to assure that Congress's intent under Section 5 to "banish the blight of racial

---

[15] Obviously, some plans, such as the first two (8-0-1 and 4-4-1) submitted by Port Arthur in this case, are so blatantly discriminatory in their purpose and effect that no simple modifications can save them. In such a situation, all that the district court can do is deny preclearance and send the city back to the drawing board with some general guidance.

discrimination in voting" is furthered. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 308 (1966).

The fashioning of such a plan is a classic exercise of equitable discretion by a district court. See *City of Rome* v. *United States*, *supra*, 446 U.S. at 188 (Blackmun, J., concurring) (describing the practice of conditioning approval on modifications as a "remedial device"). There is no fixed formula for measuring reasonable equivalence of voting strength. Nor, in circumstances such as these here—where blacks are afforded a fair opportunity to influence the election in three of nine districts—is it clear what additional measures may be necessary to ensure no compromise of minority voting rights as a result of annexation. That determination is, of necessity, a judgment call on which there can be reasonable differences of opinion. Compare *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15 (1971).

If we are correct that the district court, in attempting to neutralize the dilutive effect on minority voting strength of the annexation of a predominantly white population, sits as a court of equity, then it follows that the court should be "the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims." *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329-330 (1944). See also *Swann* v. *Charlotte-Mecklenburg Board of Education*, *supra*, 402 U.S. at 15. The district court therefore was obligated to consider the City's election plan as a whole to assure that the political influence of blacks will be commensurate with their strength in the enlarged city.

The City's submission regarding the district court's authority under the Voting Rights Act in annexation cases is that, if the City allows the black population in the expanded city a reasonable opportunity to elect three of nine members to the city council,[16] then the district

---

[16] In attempting to show that the City's plan assures blacks reasonable equivalence of voting strength, appellant focuses exclusively and frequently (Br. 7, 9, 12, 15 n.14, 16, 17) on the pro-

court has no authority whatsoever to consider the effect on the voting strength of blacks of any other feature of the plan. Taken to its logical extreme, the City's position would require a district court to preclear a plan that refused to allow blacks to vote at all outside of the districts in which they are given substantial control. Certainly nothing in *City of Richmond*'s "reasonable equivalence" test supports such a result.

Indeed, the facts in *City of Richmond* directly refute the City's proportional representation argument. Not only did the single-member district plan in Richmond provide blacks with a better opportunity to elect four of the nine members of the City Council than does Port Arthur's plan, but in the fifth district blacks comprised 40.9% and thus might be able to exercise a swing vote influence. 422 U.S. at 372. As we discuss more fully later (see pages 23-25, *infra*), with a majority vote requirement, blacks in Port Arthur will not exercise any influence over elections in the at-large districts. *City of Richmond* thus does not support appellant's argument that the district court lacked authority to review the at-large features of this plan.

In addition, such an approach would be inconsistent with Congress's intent in extending the Voting Rights Act to Texas. The Senate Report on the extension of the Act pointed out (S. Rep. No. 94-295, 94th Cong., 1st Sess. 27-28 (1975)):

---

portion of the black voting age population, which is about 35% in the expanded city. Appellant cites (Br. 7 n.6) *City of Rome* as indicating this Court's "strong preference" for using voting age data. But this Court in *City of Rome* merely indicated its preference for both voting age data and general population data over voter registration data. 446 U.S. at 186 n.22. The Court expressed no preference between voting age and general population figures. The former indicate the immediate effect on representation of the City's plan and the latter indicate the likely long term consequences of the plan. Thus, to focus on the 35% is to devalue the potential black electoral strength, which may properly be accorded some weight in light of the small likelihood that blacks will be able to enlarge the number of candidates they can elect even after the voting age population grows.

> Election law changes which dilute minority political power in Texas are widespread in the wake of recent emergence of minority attempts to exercise the right to vote. * * *
>
> The at-large structure, with accompanying variations of the majority run-off, numbered place system, is used extensively among the 40 largest cities in Texas [including Port Arthur]. And, under state statute, the countless school districts in Texas elect at-large with an option to adopt the majority run-off, numbered place system. These structures effectively deny Mexican-American and black voters in Texas political access in terms of recruitment, nomination, election and ultimately, representation.

H.R. Rep. No. 94-196, 94th Cong., 1st Sess. 18-19 (1975). Indeed, the hearings and debates in 1975 demonstrate a clear awareness of, and concern about, the widespread use in Texas of, *inter alia*, at-large elections coupled with majority vote requirements to halt the expanding influence of minorities in local Texas elections. See, *e.g.*, 121 Cong. Rec. 16251 (Rep. Edwards); *id.* at 16278 (Rep. Roybal); *id.* at 16280 (Rep. Jordan); *id.* at 16288, 16881 (Rep. Badillo); *id.* at 16911-16912 (Rep. Roybal); *id.* at 16915 (Rep. Rangel); *Extension of the Voting Rights Act of 1965: Hearings Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 94th Cong., 1st Sess. 462, 491-492, 524, 992 (1975) [hereinafter *Senate Hearings*]; *Extension of the Voting Rights Act: Hearings on H.R. 939, etc., Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 94th Cong., 1st Sess. 389, 404, 519-521 (1975). Congress extended the Section 5 requirements of the Voting Rights Act to Texas to assure that such efforts in the future would be subject to the scrutiny of preclearance. It cannot reasonably be assumed that Congress would expect the judicial inquiry into the very practices it found to be pervasive and offensive enough to warrant application of Section 5 to Texas to be foreclosed simply because the City has be-

grudgingly moved in the direction of proportional representation with regard to certain facets of its electoral plan.

Contrary to appellant's simplistic view of Section 5, "adequacy of representation is not measured solely by the black community's ability to elect its first-choice candidate." *City of Rome* v. *United States*, 472 F. Supp. 221, 248 (D.D.C. 1975), aff'd, 446 U.S. 156 (1980). Indeed, this observation is as true when minorities claim that they have an insufficient opportunity to choose their own candidate as it is when the majority claims that the minority's representation is roughly proportional. See *United Jewish Organizations* v. *Carey*, 430 U.S. 144, 172-173 (1977) (Brennan, J., concurring in part). A claim of proportional representation cannot pretermit judicial review because the City's effort "might be a 'contrivance to segregate' the group" or at least have that effect and thereby perpetuate discrimination. *Id.* at 172, quoting *Wright* v. *Rockefeller*, 376 U.S. 52, 58 (1964). We thus submit that the validity of the district court's exercise of equitable discretion cannot be judged solely on a mathematical basis. Instead, the proper analysis must be to compare the findings of the district court with the record to determine whether the evidence shows a clear abuse by the court.[17]

---

[17] Even assuming that appellant is correct that the district court's discretion ends once the City has provided for proportional representation, the district court still would remain the primary judge of whether the minority's voting strength is equivalent to its size in the expanded city. Moreover, before the court's review of the at-large features of a mixed single-member, at-large scheme were pretermitted, we submit that the record would have to show that blacks have a virtual guarantee of proportional representation. Such a guarantee is quite dubious here in light of the variables that affect our ability to judge the City's electoral scheme. For instance, the black population in Port Arthur constitutes 40% of the expanded City, but only 35% of the voting age population. Obviously, a comparison between the percentage of controlled seats and either population statistic alone gives important information about either present or probable future representation. See note

B. In Its June 12, 1981 Opinion, The District Court Found The City's Use Of At-Large Elections With A Majority Vote Requirement In Prior Electoral Plans Had Both A Discriminatory Purpose And A Discriminatory Effect

Appellant characterizes (Br. 17) the district court's order modifying the majority vote requirement in the at-large elections as "unexplained." The order itself is quite terse; it simply states that the retention of the majority vote feature "insufficiently neutralizes the adverse impact upon minority voting strength which resulted from the expansion of Port Arthur's borders" (J.A. 87a). But the July 14 order at issue here must be read in light of the findings and conclusions of the district court in its June 12 opinion regarding the two prior plans submitted for preclearance. Modification of the proposed plan to require a plurality vote provision for the at-large seats was, in the court's view, necessary to give black voters a meaningful opportunity to participate in the political process in the enlarged community.[18]

16, *supra*. Thus, the district court could reasonably have regarded the differential in representation as something greater than two percent.

Second, whether the black minority will be able consistently to choose a black candidate from District 4 is not wholly free of doubt. The 1980 census shows that the black population was 61.2%, somewhat lower than the estimates used by the district court (J.A. 30a-31a). This percentage is sufficiently low that it does raise at least a doubt as to the ability of blacks to prevail in elections in that district (J.A. 58a n.160). Although the district court was correct that in District 4, blacks are provided "the chance to elect a candidate of their choice" (*ibid.*), this hardly seems adequate to justify completely disregarding all other facets of the City's electoral plan.

[18] The City relies heavily (Br. 8, 9, 12, 15, 18) upon the results of the interim elections for council members from the six single-member districts created by the plan now before the Court as demonstrating that the *City of Richmond* standard has been satisfied. However, we view the district court's action as prompted primarily by its concern about the use of a majority-win provision for the two nonmayoral at-large seats rather than about the single-

For the reasons that follow, we are unable to fault that conclusion as an abuse of judicial discretion, even though it does not fully comport with the compromise that was satisfactory to the United States.

The City presented to the district court for preclearance, in connection with its territorial expansion, two plans that the court concluded had not only a discriminatory effect upon the rights of black voters but also were "enacted with an invidious purpose" (J.A. 70a). Both the "8-0-1" and the "4-4-1" plan relied upon the use of at-large elections by majority vote to accomplish this invidious purpose and effect.

The court's uncontested finding that at-large elections by majority vote in Port Arthur have a discriminatory effect upon black voters was based upon several factors. First, the court found that the black and white communities in Port Arthur have become seriously polarized as a result of discrimination suffered by blacks and that this polarization was manifested by extreme racial bloc voting. Moreover, city officials who have been elected by "almost total bloc voting by race" have been systematically unresponsive to the needs and interests of black citizens.[19]

---

member contests. Thus, we do not believe that the outcome of those elections would change the decision reached by the court.

Since those elections involved only single-member districts they supply no insight into the effect of the majority vote feature on the at-large elections in the expanded community. The only election relevant to that issue was the at-large mayoral election where a white and a black man ran against each other in a run-off and the white candidate won (Br. Add. 16b). Thus, that election confirms the lack of influence blacks have in at-large elections with a majority-vote requirement. In addition, a single election is hardly a conclusive basis for declaring the findings of a court of equity to be erroneous. The elections are some evidence that blacks will have influence in the single-member districts, but it hardly warrants ignoring every other aspect of the plan.

[19] Unresponsiveness was demonstrated by the following factual findings: the black residential neighborhoods in the City were most in need of municipal improvements; the public library was relocated to, and a new civic center was built in, an area less

Second, within the context of racial bloc voting, the majority vote[20] and residency requirements for at-large elections promoted head-to-head contests between black and white candidates in which black voters, being in the minority, invariably failed to elect the candidate of their choice (J.A. 56a).[21] Of even greater concern is the court's finding that the use of at-large elections decided by majority vote means that "black voters of the City essentially have *no role* in determining the outcome of

---

accessible to most minority residents; black municipal employees disproportionately occupy lower paying positions; and there has been a disproportionately low number of blacks appointed to the City's boards and commissions (J.A. 35a-36a).

[20] A majority vote requirement can impede black voters from concentrating their vote behind one or a limited number of candidates. Assuming that the vote of the white community is divided among a number of candidates, the candidate thus favored by the black community has a good chance of being elected. See *City of Rome* v. *United States*, 446 U.S. 156, 184 n.19 (1980). However, where there is a majority vote requirement, the candidate favored by the black community must compete in a run-off election in which the candidate favored by the white majority inevitably wins.

[21] The record contains testimony by several black candidates concerning the effect of the majority vote feature of the at-large elections in Port Arthur. There was testimony that blacks could not be elected at-large nor could the black community have any impact upon the at-large elections because of the combination of racial bloc voting and the majority vote requirement (Evans Dep. 31-32; Scott Dep. 11, 18, 20-21). A black candidate who has been elected to the school board contrasted the school board election system, which provides for multi-member, at-large elections with the winner determined by plurality vote, to the councilmanic elections (McElroy Dep. 6, 15-16). He stated that under the plurality win system, blacks have a much greater say about the outcome because blacks are able to concentrate their vote (see also Evans Dep. 32-33). Although one black council member has been elected at-large, he has enjoyed the benefits of incumbency since 1963 (when the city changed from the ward system to the at-large system) and has faced only black opponents since then (J.A. 40a). An analysis of voting patterns by race demonstrates that he has not been the choice of the black community in recent years (J.A. 40a, 59a).

the * * * at-large elections for council seats" (J.A. 57a, emphasis added). In the absence of racial bloc voting, a group the size of the black population of Port Arthur would ordinarily be expected to have a substantial influence over at-large elections. The district court found, however, that "[a]lthough theoretically possible, black Port Arthurians have not even wielded a swing vote in at-large races between two or more white contestants" (*ibid.*). Thus, the majority vote feature has been a blatant obstacle to the ability of black citizens to have any influence on the elections of candidates for at-large seats.

In addition to these findings of the discriminatory effect of the post-expansion electoral plans, the court also concluded that those plans were devised with a racially discriminatory purpose. In essence, the court found that every time black voters began to pose a serious threat to white domination of City politics, the City took steps to curb black influence. Thus, in 1963, at a time when the black population was expanding eastward in a way that suggested a possible black majority in an additional district, the district lines were redrawn along an east-west axis thereby fragmenting the black population and diluting its effect upon the city council elections (J.A. 9a-11a, 66a).

Later, during the campaign for the 1977 council elections, at a time when serious racial tensions existed in the City, the incumbent City Council members sponsored newspaper advertisements which the court found were "intended to alert the white population to the serious political challenge posed by black Port Arthurians" (J.A. 66a). The severely racially-polarized election results then "sparked a mysteriously sudden push for expansion [of the City's boundaries] which significantly diminished black voting strength" (J.A. 70a).

City officials then devised two electoral plans for the expanded city (the "8-0-1" and "4-4-1" plans) which, "[r]ather than neutralizing the effect of this dilution" (J.A. 70a), assured a continuing diminution in black voting rights. The court found that the City Council,

in drawing up its post-annexation plans, "stubbornly clung to the concept of at-large elections where single-shot voting was impeded by residency and majority vote requirements" and with knowledge that "City politics were seriously polarized by race" (*ibid.*).

Expressing a "desire to minimize the intrusion of th[e] federal court into the affairs of the City,"[22] the court declined to condition preclearance of the expansion upon conversion to an all single-member district system (J.A. 74a). Instead, it invited the City to "develop an electoral system of its own design" (*ibid.*). At the same time, having concluded that the prior post-expansion

---

[22] The court expressed reservations regarding its "authority to affect the at-large rule directly" in light of this Court's decision in *Beer* v. *United States*, 425 U.S. 130 (1976). Reliance on *Beer* in this context, however, was misplaced. In *Beer*, the district court was without authority to affect the at-large seats because, having existed without change since 1954, they were not subject to review under Section 5. Here, however, there was not only an enlargement of the City's boundaries, but also an expansion of the at-large system into the enlarged area. In this context, therefore, the at-large system was clearly subject to the preclearance requirements.

In *City of Petersburg* v. *United States*, 354 F. Supp. 1021, 1031 (D.D.C. 1972), aff'd, 410 U.S. 962 (1973), the district court approved the annexation only on condition that the city "shift from an at-large to a ward system of electing" its council members. That decision was approved by this Court in *City of Richmond*, *supra*, 422 U.S. at 370. Conversion to an all single-member system is one way of correcting the dilution caused by an annexation; the method employed by the district court here is another. The United States introduced into evidence, as a benchmark against which to measure the City's proposed plan under the *City of Richmond* standard, a fairly-drawn nine-member ward type plan (with the mayor to be selected from among the successful candidates as under the pre-1963 ward system) (J.A. 8a; Def. Exh. 134) under which black voters could reasonably expect to elect candidates of their choice in 4 of the 9 districts. As appellant notes (Br. 13), the United States concluded that a fairly-drawn single-member district plan with eight districts would not increase minority representation appreciably over the original 4-2-3 plan. We also agreed with appellant, however, that under an eight-member plan the black percentage in a fourth district might be "sufficiently high to exert a 'swing vote' influence" (J.A. 80a n.2).

plans (the "8-0-1" and the "4-4-1") using at-large elections with a majority vote requirement were devised with a discriminatory purpose and had a serious inhibiting effect on minority influence in the at-large contests (J.A. 69a-73a), the district court made plain its doubt about the legality of any new plan that contained such a majority vote feature.[23] In light of the record before the district court regarding the past use by the City of the majority vote requirement in conjunction with at-large elections, the court's modification of that requirement cannot be regarded as so devoid of factual basis as to be an inappropriate exercise of judicial discretion.[24]

---

[23] One advantage of a ward plan over a plan that relies upon at-large election is the greater sensitivity of the single-member system to demographic changes. Thus, while the at-large system with a majority vote requirement, in the context of racial bloc voting, is not fully responsive to the growth of black population unless it becomes a majority of the population city-wide, a single-member system reflects changes in residential neighborhoods as they occur along the scale toward city-wide majority. An at-large system with a majority win provision such as originally proposed by the "4-2-3" plan might well lock out black voters in Port Arthur unless and until they gain majority status or racial bloc voting ceases. Future annexation of white areas could prevent the former eventuality from occurring. The plurality win condition imposed by the district court's order would serve to ameliorate this lock-out effect.

[24] The decision below is in this respect highly particularized; the district court reviewed the newly proposed plan against the backdrop of two previous blatant attempts by the City to avoid complying with the requirements of Section 5 of the Voting Rights Act. In this context it is not surprising that the district court would take special care to scrutinize every aspect of the plan to make certain that features proposed previously to undermine black influence were not carried forward in more subtle fashion to protect white control in the City Council for the foreseeable future. In this respect, the district court was in a small way performing the very function envisioned for it by Congress when it enacted the Voting Rights Act. Section 5 was adopted to discourage cities from "contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court

Our submission in this case, in contrast to that of appellant, is very narrow. We do not generally oppose all at-large elections with majority vote requirements or mixed at-large and single-member district plans. Our willingness to join in submitting the City's final plan for approval by the district court is ample evidence of our inclination to approve such plans. But most cities are not disadvantaged by racial polarization as significant as was found in Port Arthur. The district court was obviously offended by the City's use of a scheme—at-large elections—that purports to encourage elected officials to be responsive to all segments of the community, but which when coupled with a majority vote requirement in a context of rigid racial bloc voting will result in a significant minority of the City of Port Arthur being ousted from any role at all in influencing these city-wide officials. The action of the district court simply fulfills the promise inherent in an at-large feature: that all voters in the City will be represented by the elected councilmember. In the unusual setting of Port Arthur, Texas, the district court's judgment is an equitable one and should be upheld.

C. Appellant Is Incorrect In Asserting That The Plan Approved By The District Court Goes Beyond What Is Required Under This Court's Decision In *City of Richmond*

Appellant argues (Br. 19) that substitution of a plurality win provision "tilts" the plan toward overrepresentation of black voters. As discussed *supra*, however, the at-large feature of the 4-2-3 plan was employed on a larger scale by the City in its prior plans to prevent black voters from having any opportunity to participate meaningfully in the electoral process. Use of a plurality win provision does not provide the 35% voting age black population with a significant opportunity actually to

---

decrees." *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 335. See H.R. Rep. No. 89-439, 89th Cong., 1st Sess. 10-11 (1965); S. Rep. No. 89-162 (Pt. 3), 89th Cong., 1st Sess. 8, 12 (1965).

elect the candidate of its choice to either of the at-large seats, but it does assure it some influence over the outcome of those elections through its ability to concentrate its vote behind a single candidate (see discussion *supra*, page 23 note 20).

This is an influence that the district court specifically found simply will not exist in the plan as submitted to the district court. Contrary to the City's assertion (Br. 18), the Attorney General did not state that the imposition of residency districts for the two at-large seats would give blacks "significant influence over" the candidate elected from the 70% black district. Rather the United States stated that the residency requirement would "assure that one of the at-large representatives will reside in, and *hopefully represent* the interest of, that portion of the city where a sizeable majority of the black population resides" (J.A. 81a, emphasis added).[25] At the same time, we also observed (*id.* at 80a-81a):

---

[25] In this case the imposition of a residency requirement for the at-large seats replaced the City's proposal of having numbered posts for those seats. City Of Port Arthur's Report To The Court Pursuant To Order Of June 12, 1981. Although both residency districts and numbered posts often have a dilutive effect upon minority voting strength because of their tendency to promote head-to-head contests, at least with a residency requirement there is a greater chance that the candidate elected from one district will have interests in common with the 70% black residents of that district. Nonetheless, it is clear that there are significant pockets of white voters in District 5 (the residency district for one of the at-large seats), from which a candidate with attitudes suitable to the white majority outside of that district could emerge. The district court recognized that the newly acquired Sabine Pass in District 5 might supply candidates who would not necessarily be influenced by blacks, who live within the same district, but who are not within very close geographic proximity. In addition, the 1981 elections show that Precinct 33 of the City, which is a predominantly white community within District 5, obviously has voting interests very different from the majority in that District. In the councilmanic elections, that precinct supplied well over 50% of all the votes received by the white candidate, Cherry R. Ebeling (Br. Add. 4b). In addition, in the run-off race for mayor, Precinct 33 heavily supported the white candidate, while the black precincts (52-59 and 81) overwhelmingly voted for the black candidate (*id.* at 3b).

> [T]he application of a majority vote requirement to the at-large seats will make it more difficult, given the existing patterns of racial bloc voting, for the minority community to influence the selection of persons to fill those seats. Minority influence on those positions would be increased if the two at-large seats (excluding the mayor) were run on a plurality win system.

The district court viewed this observation as sufficiently compelling to insist that the City's electoral plan be modified accordingly.[26] Against the background of this case, that judgment is entitled to be upheld.

II. THE DISTRICT COURT DID NOT ERR IN REVIEWING INDEPENDENTLY THE CITY'S ELECTORAL PLAN EVEN THOUGH THE UNITED STATES HAD AGREED TO SETTLE THE LITIGATION ON THE BASIS OF THAT PLAN

The City argues (Br. 20-21) that the district court "failed to give proper weight to the Attorney General's determination that the 4-2-3 plan satisfied the Voting Rights Act." In addition, the City, throughout its brief, characterizes the district court's error as its refusal to approve the plan jointly submitted by the City and the United States. The district court committed no legal error in declining to rubber stamp our negotiated settlement with the City.

---

[26] The plan as modified should, in the long run, reduce the tendency of the voters in Port Arthur to vote in racial blocs. With plurality voting in the at-large seats, the candidates for those seats will almost certainly have to be somewhat solicitous of the black vote. Once black interests begin to be represented by white elected officials, then blacks should become less concerned about voting as a racial group. Moreover, without head-to-head contests split along racial lines, whites will have less incentive to vote as a racial bloc. Eventually, even with blacks holding a distinct minority of the City Council seats, race should become less of a factor in deciding how to vote. See *Senate Hearings*, *supra*, at 38, 67, 116 (effect of Voting Rights Act has been to reduce race-consciousness in elections).

Section 5 assigns primary responsibility to the United States District Court for the District of Columbia to review voting changes submitted to it for preclearance.[27] While the Attorney General becomes a party-litigant on behalf of the United States in any such suit he is not in such circumstances assuming his special role under Section 5 as the alternate decision-maker to the court. Thus, the determination of whether a particular plan has been shown to be free of discriminatory purpose and effect rests ultimately with the district court following commencement of a Section 5 suit—whether or not agreement can be obtained from the Attorney General.

Following the district court's denial of the City's request for declaratory judgment concerning the 8-0-1 and 4-4-1 plans and its order conditioning preclearance upon adoption of a new electoral system satisfying the concerns expressed in the court's June 12 opinion, the City and the United States jointly submitted to the Court the 4-2-3 plan at issue in this appeal.[28] The views stated

---

[27] The City's argument turns the statutory scheme for the respective roles of the court and the Attorney General on its head. The statute contemplates that the district court will be the primary reviewer of voting changes of covered jurisdictions. See *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 335; Roman, *Section 5 of the Voting Rights Act: The Formation of an Extraordinary Federal Remedy*, 22 Am. U.L. Rev. 111, 124 (1972). The administrative alternative of review by the Attorney General "merely gives the covered State a rapid method of rendering a new state election law enforceable." *Allen* v. *State Board of Elections*, 393 U.S. 544, 549 (1969). The Attorney General, in reviewing the changes submitted to him, applies legal principles and standards developed by the court. See 28 C.F.R. 51.39.

[28] We do not understand the City to argue that the Attorney General in fact precleared the 4-2-3 plan. Had he done so, there would have been no further judicial review under Section 5 of his determination. *Allen* v. *State Board of Elections*, 393 U.S. 544, 549-550 (1969). Neither should the views expressed by the United States in the Joint Submission be considered as tantamount to the preclearance of a plan submitted to the Attorney General under the procedures established by Section 5; see 28 C.F.R. 51.18-51.26.

in the Joint Submission were those of the United States in its role as a party litigant, in the context of a negotiated compromise, designed to resolve the litigative issue between the United States and the City. Having placed the plan before the district court, the City agreed to let that court make the determination whether the plan satisfied Section 5.

On that issue, the district court properly exercised its independent judgment in concluding that a relatively small modification was required. In making its determination, the district court considered the fact that the United States was willing to accept the 4-2-3 proposed plan as a compromise resolution of the lawsuit. In the Joint Submission, we expressly acknowledged that the question was a close one, and we so advised the court (see page 10, *supra*). In searching for a plan that equitably protected the rights of the blacks and the prerogatives of the City, the district court viewed the matter differently, as it was fully empowered to do. The fact that the plan was jointly submitted with the United States does not affect the propriety of the district court's decree.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

REX E. LEE
Solicitor General
WM. BRADFORD REYNOLDS
Assistant Attorney General
LAWRENCE G. WALLACE
Deputy Solicitor General
CARTER G. PHILLIPS
Assistant to the Solicitor General
JESSICA DUNSAY SILVER
MARIE E. KLIMESZ
Attorneys

JUNE 1982

☆ U. S. GOVERNMENT PRINTING OFFICE: 1982 375240 917

Appellee's Brief

2

No. 81-708

Office - Supreme Court, U.S.
FILED
JUN 2 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

CITY OF PORT ARTHUR, TEXAS, *Appellant*

v.

UNITED STATES OF AMERICA

and

ABRAHAM DOUGLAS, ELGIE JENKINS, WALTER MOSLEY, and WILLIE LEWIS, *Appellees.*

BRIEF OF INTERVENORS-APPELLEES

---

* ELIZABETH K. JULIAN
MICHAEL M. DANIEL
JULIAN & DANIEL
8204 Elmbrook, Suite 200
Dallas, TX 75247
(214) 630-9208

* *Counsel of Record for Intervenors-Appellees*

WILLIAM L. ROBINSON
NORMAN J. CHACHKIN
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
733 15th Street, N.W.
Washington, D.C. 20005
(202) 628-6700

ELIZABETH C. PETIT
EAST TEXAS LEGAL SERVICES
P.O. Box 2552
Beaumont, TX 77704

DON FLOYD
1015 East Gulfway Drive
Port Arthur, TX 77604

Attorneys for Intervenors-Appellees

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

QUESTION PRESENTED

In this action under Section 5 of the Voting Rights Act of 1965, 42 USC 1973c, the district court concluded (in a decision not challenged by Appellants) that the City of Port Arthur's several suggested post-annexation electoral plans were intended to, and did, dilute the voting strength of the city's minority community through the use of at-large elections with residency and majority-vote requirements. Thereafter, the city submitted another plan to the District Court. The Court rejected the plan.

The issue in this case is whether the district court erred in refusing to find that this most recent of the city's plans was nondiscriminatory, where the evidence showed (a) that minority citizens constitute 41% of the total population but could elect only one-third of the representatives on the city council; and (b) that the city's most recent plan incorporated the same racially discriminatory devices which had been a part of its previously rejected submissions.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1
STATUTE INVOLVED	1
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	4
ARGUMENT	4
I. The City's Plan Will Prevent Council Representation That Is Fairly Reflective Of The Minority Strength In The Enlarged Community And Thus Fails To Neutralize To The Extent Possible The Adverse Effects Of The Changes In Voting Occasioned By The Expansion Of Municipal Boundaries	4
II. The City Totally Failed To Meet Its Burden To Prove That The 4-2-3 Plan Was Not Adopted With Impermissible Discriminatory Purpose	9
A. The record on which the Court based its unappealed findings of discriminatory purpose in adopting the two previous plans reveals a city marked by racial discrimination, racial polarization, and motivated by illicit purpose in the use of the very voting procedures that the City would continue to use to minimize the political strength of the black community	9
B. In the most recent plan, the City intentionally utilized the majority run-off feature to "tilt" the access to the at-large seats towards whites and away from blacks and to insure that blacks would have access to no more than three council seats	12
III. The District Court Was Not Bound By The Attorney General's Acceptance Of The Plan Any More Than It Would Have Been Bound By The Attorney General's Rejection Of The Plan	14
CONCLUSION	16

TABLE OF AUTHORITIES

CASES: Page

City of Petersburg v. *United States*, 354 F.Supp. (D.D.C. 1972), aff'd without opinion, 410 US 962 (1973) .. 3

City of Richmond v. *United States*, 422 US 358 (1975) ..... *passim*

City of Rome v. *United States*, 472 F.Supp. 221 (D.D.C. 1979), aff'd, 446 US 156 (1980) 3, 9

Western Union Telegraph Co. v. *Foster*, 247 US 105 (1918) 13

STATUTE:

Voting Rights Act of 1965, Section 5, as amended, 42 USC 1973c ..... *passim*

OPINIONS BELOW

The order of the District Court from which this appeal is taken is not reported. The opinion entered by the three judge district court for the District of Columbia on June 12, 1981 is reported at 517 F.Supp. 987. The Order accompanying that Opinion is presently unreported.

JURISDICTION

The City of Port Arthur filed this action seeking a declaratory judgment under Section 5 of the Voting Rights Act of 1965, as amended, 42 USC 1973c. The judgment of the three judge district court was entered on July 14, 1981. The City of Port Arthur filed its notice of appeal on July 21, 1981. The jurisdiction of this Court is invoked under 42 USC 1973c.

STATUTE INVOLVED

Section 5 of the Voting Rights Act of 1965, as amended, 42 USC 1973c, in pertinent part provides:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in Section 1973b(a) [of this title] * * * are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972 * * * such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color . . .

STATEMENT OF THE CASE

This case involves efforts by the City of Port Arthur to obtain approval of several voting changes, including boundary expansions, pursuant to Section 5 of the Voting Rights Act.

In 1977 and 1978, the City of Port Arthur moved to expand its boundaries and its population by the consolidation of the two cities of Pear Ridge and Lakeview and the annexation of the town of Sabine Pass. The effect of these expansions was to significantly alter the racial composition of the City by adding 5,675 whites and 11 blacks to a City which, according to the 1980 census had a pre-annexation total population of 54,485, 45.21% of whom were black (J.A. 6a). These consolidations and annexations along with a new election plan for the expanded jurisdiction were submitted to the Justice Department for approval. Between December of 1977 and March of 1980 the City sought and was denied approval of two at-large election schemes by the Attorney General. On March 12, 1980 the City filed suit in District Court seeking a declaratory judgment that its expansions and the 8-0-1 voting plan were not discriminatory in purpose or effect.[1] The City of Port Arthur subsequently amended its complaint to seek approval of a 4 single member district, 5 at-large voting plan.[2] The Court permitted four black citizens of Port Arthur to intervene in the action. At trial,

---

[1] The City proposed to elect 8 council members at-large by residency district and the mayor at-large. This plan is referred to in the record as the 8-0-1 plan.

[2] Also known as the 4-4-1 plan, this plan consisted of 4 council members elected by district, 4 elected at-large with residency requirements, and the mayor at-large, all with the majority vote requirements.

the City primarily urged approval of the 4-4-1 plan. Both the 8-0-1 and the 4-4-1 plan were opposed by the United States and the Intervenors.

On June 12, 1981, a three judge court denied the request by the City of Port Arthur for a declaratory judgment that numerous voting changes submitted to the Court did not have the purpose of nor would they have the effect of discriminating on the basis of race. Because the voting changes at issue involved a municipal expansion, the Court retained jurisdiction of the matter and directed the City of Port Arthur to develop an election plan which would meet the concerns set out in its June 12, 1981 Opinion. The City responded by submitting a 4-2-3 plan which was considered by the Court and found wanting.[3] The Court, however, advised the City in its Order dated July 14, 1981 that the plan and hence the expansions could be approved if the City withdrew the majority vote requirement for the two at-large councilplaces other than the Mayor. (J.A. 87a). This remedial device of conditioning the approval of annexations on the elimination of pre-existing discriminatory aspects of a City's electoral scheme was developed in *City of Petersburg* v. *US*, 354 F.Supp. 1021 (D.D.C. 1972), *aff'd*, 410 US 962 (1973), and expressly approved by this Court in *City of Richmond* v. *US*, 422 US 358, 369-371 (1975). *City of Rome* v. *US*, 446 US 156, 188 (Blackmun, J. concurring).

---

[3] This 4-2-3 plan consists of 4 single member districts of approximately equal size, two larger districts made up of a combination of two of the four smaller districts, and three councilmen, including the Mayor, elected at-large, using place and majority vote run-off requirements. Subsequently, the City amended this plan to substitute a residency requirement for the place requirement on the two non mayoral at-large places. Of those nine council places, 3 contained black numerical majorities, all nine utilized the majority vote run-off feature.

The City has appealed the Court's refusal to approve this last plan as non-discriminatory.

SUMMARY OF ARGUMENT

The District Court correctly denied the City's request for a declaratory judgment that its most recent plan was non-discriminatory in purpose or effect. The plan clearly failed to fairly reflect the strength of the minority community in the enlarged city as required by *Richmond*, supra. Moreover, the overwhelming evidence of invidious purpose by the City in adopting the two previous election plans clearly supports a rejection of the new plan which utilized the same discriminatory features condemned by the Court in its June 12, 1981 Opinion, absent any evidence to justify the continued use of those features.

ARGUMENT

I. The City's Plan Will Prevent Council Representation That Is Fairly Reflective Of The Minority Strength In The Enlarged Community And Thus Fails To Neutralize To The Extent Possible The Adverse Effect Of The Changes In Voting Occasioned By The Expansion Of Municipal Boundaries.

The City has argued in its brief that the 4-2-3 plan, as submitted, affords a reasonable opportunity to the black community to chose three council people, that the special election held in November in 1981 demonstrates that this will be the result under the plan, and that this fact alone satisfies Section 5.[4] However, none of the parties con-

[4] The November, 1981 election was held pursuant to Court Order after intervenors filed an action in the Eastern District of Texas alleging unconstitutional conduct on the part of the City and requesting an interim election. The only council positions filled by election were 1, 2, 3, 4, 5, 6 (the single member districts) and the Mayor. The two disputed places, 7 and 8, were filled by lot among the sitting council.

tested that the 4-2-3 plan proposed by the City in response to the Court's directive would afford the black community a reasonable opportunity to elect three councilpersons of their choice.[5] The question is whether or not this plan meets the test for remedial plans as set out in *Richmond* v. *US*, supra, and does not otherwise have a discriminatory purpose or effect.

The City asserts that the plan proposed "provides blacks the same opportunity to elect representatives as would an exclusively single member district plan," and that "it is beyond dispute" that the 4-2-3 plan provides the City's black minority with representation equivalent to its numbers (Appellant's Brief, 13). This is simply a misstatement of the facts. The United States submitted an exclusive single member district plan at trial solely for the purpose of demonstrating otherwise, which created 4 majority black districts, and which the government characterized as affording blacks "representation reasonably equivalent to their political strength in the enlarged community" (Defendants' Post Trial Brief, 62).

The City further argues that the District Court exceeded its authority by imposing a condition upon an election plan which already satisfied Section 5. This is no more than a conclusionary statement based on circular reasoning. The ultimate issue before the Court was

---

[5] The results of the election, if relevant at all, only confirm the Court's findings that a heads up contest between black and white candidates will be characterized by racially polarized voting in which the black candidate or the choice of the black community will lose. The only race that involved the at-large feature coupled with majority run-off requirements was for the position of Mayor. The black candidate gained 43% of the vote to the white candidate's 57% in the run-off. If the Court feels that this election has any relevancy, it should be considered only after affording an opportunity to make a complete record in this regard.

whether or not the City's plan satisfied Section 5 of the Voting Rights Act, which the Court resolved against the City. The Court "imposed" no condition upon the City, but rather, following Supreme Court-approved practice, offered the City the opportunity to satisfy Section 5 by modification of its rejected proposal.

In the June 12, 1981 Order the Court made clear that the adverse impact of the increase of white voters in substantially larger proportion than that of black voters was due in large part to the fact that at-large, place and majority run-off features would be utilized by the City in its post-expansion election plans. The post-judgment plan proffered by the City clearly does not "neutralize to the extent possible" the adverse impact of the proposed expansion on black voters, nor does it effectively address the concerns expressed in the District Court's Opinion.

In evaluating the impact of an election plan on post annexation Port Arthur, one must examine the options before the City. Using *Richmond* as a guide, the City could have proposed an all single member district plan to the Court that would have resulted in blacks having numerical majorities in four of nine councilplaces. This in fact was the course urged by the United States and the Defendant-Intervenors at numerous stages throughout this litigation. (JA 74a). Had the Court conditioned approval upon a plan such as the one introduced by the Justice Department in the trial of this cause, it would have resulted in blacks, who are under 1980 census approximately 41% of the expanded City population, likely filling approximately 44% of the elected positions. This would hardly "result in substantial over-representation of the City's black community" as the City asserts. In fact, that is almost exactly the representation that this Court found 'fairly reflective' of Richmond's 42% black

post annexation population. *City of Richmond* v. *US*, supra at 371-372.

The Court, however, because of its "desire to minimize the intrusion of this federal court into the affairs of the city" permitted the City the opportunity to develop an electoral system of its own design, consistent with the findings of the Court (J.A. 74a).

The City, in keeping with its conduct throughout this litigation, returned to the Court with a plan that literally flew in the face of the Court's earlier Opinion. In spite of the fact that even after the effective dilution by expansion, Port Arthur had a 41% black population, the City proposed a plan that offered blacks a reasonable opportunity to elect only three out of nine seats, or 33% of the Council, and continued to utilize at large features coupled with majority run-off provisions. The City makes no serious contention that a black candidate has any chance at all, in Port Arthur, of capturing one of the three at-large seats if that candidate runs against a white. Nor does it now claim that the black community could reasonably expect to elect a candidate of its choice between two black candidates.[6] It abandons all pretext in this regard and simply argues that the effect of the at-large features coupled with the residency requirement and majority vote requirement for the three positions is irrelevant, since the 41% black population has been afforded, by the City's plan, 33% of the elected council

---

[6] The District Court discussed the recent elections of black councilman Arthur Guidry emphasizing that the black community had been unable to elect its choice, even without white opposition, and underscoring the hold the white electorate has on at-large, majority run-off places. (JA 40a).

positions. This is straining the *Richmond* reasoning farther than it can or should go.[7]

The Court acted reasonably and appropriately in rejecting this plan. Moreover, the Court's modest proposal regarding the modification of the plan was more than accommodating to any legitimate concerns of the City. The Court's "condition" neither requires the City to maximize nor allows the City to minimize the political strength of the black population. Rather, in an effort to pre-empt the legislative task of adopting an election plan as little as possible, and still enforce the Voting Rights Act, the Court indicated approval would be forthcoming if the city would modify its position on certain features.[8] In that regard, the Court had specifically found that the discriminatory effect of the at-large feature in Port Arthur was exacerbated by the use of the majority vote and place features (JA 56a-57a). The City introduced not one iota of evidence to support its contention that the majority run off feature, when coupled with the at-large features, did

---

[7] In this regard, the City is at least more honest than was the Attorney General who, in the Joint Submission, "hopes" that the person elected at-large from the majority black residency district will represent the interests of the black community. (JA 81a). This position is of course inconsistent with every factual and legal position taken by the Attorney General during the entire history of this litigation. It is also inconsistent with the District Court's findings. The Court noted that the use of residency districts, which the City argued helped blacks by limiting the candidate pool, had "little or no prospect" of enhancing representation of the black minority in an atmosphere characterized by severe racially polarized voting. (JA 71a-72a).

[8] The Court's suggested modification would have made two of the three remaining seats politically accessible to both blacks and whites, in most instances, even if polarized voting occurred, something the District Court concluded was likely for the foreseeable future.

not do just that. It was not only highly reasonable, but extremely solicitous of the City's concerns for the Court to propose modification of the majority vote requirement, rather than prohibit the use of at-large positions.

Finally, it should be noted that the Court is under no obligation to articulate those circumstances under which approval would be forthcoming, once the City failed to meet its burden under Section 5. The Court could have simply said that the City had failed to prove that the proposed plan did not have a discriminatory purpose or effect and left it to the City to try again. Given Port Arthur's rather dismal record in this regard, the Court was more than justified in concluding that some assistance by the Court would be appropriate, and indeed necessary if the citizens of Port Arthur were to ever vote again.

II. The City Totally Failed To Meet Its Burden To Prove That The 4-2-3 Plan Was Not Adopted With Impermissible Discriminatory Purpose.

A. The record on which the Court based its unappealed findings of discriminatory purpose in adopting the two previous plans reveals a city marked by racial discrimination, racial polarization, and motivated by illicit purpose in the use of the very voting procedures that the City would continue to use to minimize the political strength of the black community.

If absence of evidence of discriminatory purpose and actions on the part of the covered jurisdiction are reason for pause in a Voting Rights Act case, the City of Port Arthur poses no such dilemma. In all of the areas of concern in *City of Rome*, supra, the City of Port Arthur has a less than attractive story to tell. As the District Court notes, "The City of Port Arthur has a long history of discrimination against its black citizens." (JA 32a).

From official discrimination under the so-called Jim Crow laws, through continuing racial tension to this day as a result of school integration and police conduct towards black citizens, and the continued existence of extreme residential segregation, the City of Port Arthur has been and is a "divided city." (JA 32a-35a). In spite of the increasing black population, the City was found by the District Court to be unresponsive to the needs and concerns of its black citizens (JA 72a). Blacks are underrepresented with respect to employment, appointments to City boards and commissions, as well as with their obvious difficulty in electing representatives of their choice to positions in City government (JA 35a-37a). Not only have blacks been unable to win an election in Port Arthur in proportion to their numbers or their candidacies, they likewise have been unable to wield a so called "swing vote" in any effective measure (JA 40a). The Court concluded "the councilmembers who have been elected at large in the past have proven far more responsive to and characteristic of the interests of their white constituency than those of their black minority."[9] (JA 72a-73).

The City should not be permitted to point with pride even at the District Court's finding that the expansions into Lakeview, Pear Ridge, and Sabine Pass were not accomplished with discriminatory purpose. The Court makes clear that it is only because, when dealing with the

---

[9] The Court issues no blanket indictment of at-large elections in this case, as suggested by Plaintiffs. (Appellant's Brief, 17-18). The Court simply finds that factually, the City of Port Arthur had failed to prove that it has not used these various potentially discriminatory electoral devices for the purpose of and with the effect of minimizing the effective participation of black citizens in the city government of Port Arthur.

accretion of land by a state or political subdivision, the Supreme Court has permitted Plaintiffs to escape the consequences of a "contemporaneous discriminatory intent" if it can be demonstrated that "there are now objectively verifiable, legitimate reasons for the annexation," that the City of Port Arthur is saved from a purpose finding on this score. The Court's opinion discusses at length the facts which support the conclusion that "municipal officials were at least partially motivated by a desire to abridge the electoral rights of the black population" in moving to expand their city's boundaries (JA 66a). The Court, however, concludes that the Plaintiff demonstrated the existence of legitimate purposes behind the joinder with Pear Ridge, Lakeview, and Sabine Pass, "as of the present time," thereby satisfying the "purpose test" of Section 5 with respect to voting changes occasioned by the enlargement of its borders.

The Court went on to find that contrary to the expansions, the election plans by which Port Arthur proposed to neutralize the adverse impact of the expansions not only had the impermissible discriminatory effect, but were adopted for an illicit discriminatory purpose (JA 69a). The Court focuses squarely on the use of the at-large places coupled with the majority run-off features and finds that those particular voting practices and procedures were used by the City in its election plans to discriminate against black citizens (JA 56a-57a).

It is incredible that the City could argue that the factors which led the District Court to conclude that the 8-0-1 and 4-4-1 plans had been adopted for an illicit purpose "have no bearing" on the question of whether the City was motivated by an impermissible intent when it adopted the present plan (Appellant's Brief at 16). The present plan was adopted and presented pursuant to the

direction of the District Court to address the concerns set out in the June 12, 1981 Opinion. The circumstances, far from being "vastly different" were unpleasantly similar. The City was, for the fourth time since it moved to expand its territory, attempting to obtain approval of an election plan that denied black citizens fair and equal access to representation in city government.

B. In the most recent plan, the City intentionally utilized the majority run-off feature to "tilt" the access to the at-large seats towards whites and away from blacks and to insure that blacks would have access to no more than three council seats.

There is a crucial difference in the *Richmond* situation and that posed by Port Arthur. In *Richmond*, the existence of discriminatory purpose behind the adoption of the post-annexation plan was not an issue. The principal "effect" issue was whether or not the Court should utilize the pre-annexation or post-annexation strength to determine the impact of the new plan on black citizens. Here, however, the crucial issue has been the intent and purpose of the City in selecting its ameliorative plan for the post expansion City.

Upon a full record, including all evidence the City could marshall to support its burden, the Court, without dissent or appeal, concluded that the City had utilized at-large features, together with majority vote and place requirements in order to invidiously minimize the access of the black citizens of Port Arthur to the political process and municipal government.

Even if the Court should accept the City's contention that 33% of the City Council can be fairly reflective of 41% of the population, this cannot absolve the City from meeting its burden to demonstrate that such a percentage is not the result of a conscious design to control and mini-

mize the access of blacks to the political process. In *City of Richmond* v. *US*, this Court admonished that even if the plan adopted was fairly reflective of the post-annexation strength of blacks, on a straight percentage basis, such an objective test would not protect the City from the consequences of invidious discriminatory acts. Just as important as any percentage rule is the reminder that "acts generally lawful may become unlawful when done to accomplish an unlawful end . . ." *Western Union Telegraph Co.* v. *Foster*, 247 US 105 (1918); *City of Richmond* v. *US*, supra at 379. "An official action, whether an annexation *or otherwise*, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or the statute." *City of Richmond* v. *US*, supra at 378 (emphasis added).

The City offered no additional evidence to support its burden to prove that the plan was not motivated by the same illicit purpose as the previous plans. "A voting procedure not proved to have a justifiable basis is forbidden by Section 5, . . ." *City of Richmond* v. *US*, supra at 379. The City offered no evidence of racially neutrally objectives which the City sought to obtain by the use of these features in this plan. Moreover, the City has been found to have used these features in previous voting plans for an invidiously discriminatory purpose. Finally, in a revealing argument, the City admits that in adopting this plan the City "uses a majority vote requirement for the two at-large seats as a means of balancing access to them." (Appellant's Brief, 18). Were there any ambiguity as toward whom the City intends to tip the balance, the question is resolved in the next sentence, which explains that utilization of the "plurality win" feature significantly alters the nature of the plan by tilting it further towards black representation." (Appellant's Brief, 19). In *Richmond*, this Court concluded that a plan which would have

assured the 42% black population of 55% of the representation on the Council (5 of 9) would amount to "over representation" of blacks and "under representation" of whites. *City of Richmond* v. *US*, supra at 371, 373. Surely a plan which assures Port Arthur's 48% white population of 66% of the representation on the council is subject to the same criticism, and a plan which is adopted with such a purpose is questionable under Section 5.

III. The District Court Was Not Bound By The Attorney General's Acceptance Of The Plan Any More Than It Would Have Been Bound By The Attorney General's Rejection Of The Plan.

The City of Port Arthur takes a curious position with respect to the "deference" that should be accorded the Attorney General in this case. The City's assertion that the Attorney General's opinion is entitled to much deference comes late and is fleeting. The City spent over five years and several hundred thousand dollars arguing that the Attorney General was completely erroneous in his interpretation of the Act as it applied to Port Arthur. Even now, the City argues that "no weight should be given now to the belated decision of the Department of Justice's support of the District Court's ruling." In other words, the Attorney General is "constituted champion of the interest of minority voters . . ." and is entitled to "great deference" regarding his interpretations of the Act only when the Attorney General agrees with the City of Port Arthur. Otherwise, the Attorney General is misinterpreting the Act, and interfering with local control of local government.

Defendant-Intervenors respectfully submit that the Attorney General best explains the weight which should be given the position of the United States in any given

instance. [10] At that point in the litigation in which the Joint Submission was filed, the Attorney General was a party, making no independent interpretation of the Act as applied to the procedure involved, but rather seeking to address the concerns of the Court. In accepting the City's plan, the Attorney General no doubt believed he was correctly interpreting the June 12, 1981 Opinion and the concerns expressed therein. When the Court indicated otherwise, the Attorney General acquiesced in the Court's interpretation of its own Order. While it is true that the Attorney General has equal authority to that of the United States District Court for the District of Columbia to approve voting changes under the Voting Rights Act, it is also true that the jurisdiction of the United States District Court was that invoked by the City. At that point, it was incumbent upon the Court to make the evaluation of the evidence and the decision of compliance with the Act, as required by the statute.

Finally, this case is particularly inappropriate for any sort of judicial deference to administrative interpretation in light of the ambivalence of the Justice Department regarding its position. It is no more appropriate for the City to argue that the Attorney General's position on July 8, 1981 is controlling than it would be for Defendant-Intervenors to argue for a "best two out of three" rule. The District Court would have been in error to avoid its responsibility for making an independent judgment based on the facts of this case as presented to the Court.

---

[10] In its Motion to Affirm, the government states that it had "substantial reservations about the plan" and "invited the Court to review the issue independently." (Appellant United States' Motion to Affirm, p. 9).

CONCLUSION

The July 14, 1981 Order of the District Court denying pre-clearance to the 4-2-3 election plan as proposed should be affirmed.

Respectfully submitted,

ELIZABETH K. JULIAN
MICHAEL M. DANIEL
JULIAN & DANIEL
8204 Elmbrook, Suite 200
Dallas, TX 75247
(214) 630-9208

WILLIAM L. ROBINSON
NORMAN J. CHACHKIN
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
733 15th Street, N.W.
Washington, D.C. 20005
(202) 628-6700

ELIZABETH C. PETIT
EAST TEXAS LEGAL SERVICES
P.O. Box 2552
Beaumont, TX 77704

DON FLOYD
1015 East Gulfway Drive
Port Arthur, TX 77604

Attorneys for Intervenors-Appellees

Appellant's Reply Brief

Office - Supreme Court, U.S.
FILED
SEP 29 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-708

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

CITY OF PORT ARTHUR, TEXAS, *Appellant*,

v.

UNITED STATES OF AMERICA

and

ABRAHAM DOUGLAS, ELGIE JENKINS, WALTER MOSLEY, AND WILLIE LEWIS, *Appellees*.

On Appeal From The United States District Court For The District Of Columbia

REPLY BRIEF FOR THE APPELLANT

ROBERT Q. KEITH
MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Bldg.
Beaumont, Texas 77701
(713) 835-5011
Counsel of Record for Appellant

JAMES DOUGLAS WELCH
MICHAEL K. HAMMAKER
POPHAM, HAIK, SCHNOBRICH, KAUFMAN & DOTY, LTD.
Suite 802
2000 L Street, N.W.
Washington, D.C. 20036
(202) 887-5154

GEORGE WIKOFF
CITY ATTORNEY OF PORT ARTHUR
P.O. Box 1089
Port Arthur, Texas 77640
Attorneys for Appellant

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

TABLE OF CONTENTS

	Page
SUMMARY OF ARGUMENT	1
ARGUMENT	2
CONCLUSION	14
APPENDIX A	
Glossary Of Voting Plans	1a
APPENDIX B	
Schematic Drawing Of 4-2-3 Voting Plan	2a

TABLE OF AUTHORITIES

CASES: Page

Beer v. *United States*, 425 U.S. 130 (1976) 4, 14

Burns v. *Richardson*, 384 U.S. 73 (1966) 4, 6

Busbee v. *Smith*, No. 82-0665 (D.D.C., filed July 22, 1982) 5

Chapman v. *Meier*, 420 U.S. 1 (1975) 4

City of Dallas v. *United States*, 482 F. Supp. 183 (D.D.C. 1980) 8

City of Mobile, Ala. v. *Bolden*, 446 U.S. 55 (1980) ... 8, 9

City of Richmond v. *United States*, 422 U.S. 358 (1975) ..... *passim*

City of Rome v. *United States*, 472 F. Supp. 221 (D.D.C. 1979), *aff'd.*, 446 U.S. 156 (1980) 5, 14

City of Rome v. *United States*, 446 U.S. 156 (1980) ... 5

Connor v. *Finch*, 431 U.S. 407 (1977) 4, 8

Elfman Motors, Inc. v. *Chrysler Corp.*, 567 F.2d 1252 (3rd Cir. 1977) 11

Fusari v. *Steinberg*, 419 U.S. 379 (1975) 2

Gaffney v. *Cummings*, 412 U.S. 735 (1973) 4

Jordan v. *City of Greenwood*, 534 F. Supp. 1351 (N.D. Miss. 1982) 8

Lucas v. *Forty-fourth General Assembly of Colorado*, 377 U.S. 713 (1964) 6

Maryland Committee for Fair Representation v. *Tawes*, 377 U.S. 656 (1964) 6

Mosely v. *Sadler*, 469 F. Supp. 563 (E.D. Tex. 1979) 11, 12, 13

Munoz v. *Small Business Administration*, 644 F.2d 1361 (9th Cir. 1981) 11

United Jewish Organizations of Williamsburgh, Inc. v. *Carey*, 430 U.S. 144 (1977) 5

Upham v. *Seamon*, ___ U.S. ___, 102 S.Ct. 1518 (1982) 3, 4, 8

Whitcomb v. *Chavis*, 403 U.S. 124 (1971) 3, 6, 8

Wise v. *Lipscomb*, 437 U.S. 535 (1978) 4, 8

Table of Authorities Continued

Page

STATUTES:

Voting Rights Act Amendments of 1982, Pub. L. 97-205, 96 Stat. 131 (1982) 2

Voting Rights Act of 1965, § 5, *as amended*, 42 U.S.C. § 1973c (1981) ..... *passim*

MISCELLANEOUS:

Report of the Subcommittee on the Constitution to the Committee on the Judiciary on S.1922, U.S. Sen., 97th Cong., 2d Sess. (1982). 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 81-708

CITY OF PORT ARTHUR, TEXAS, *Appellant*,

v.

UNITED STATES OF AMERICA

and

ABRAHAM DOUGLAS, ELGIE JENKINS, WALTER MOSLEY, AND WILLIE LEWIS, *Appellees*.

On Appeal From The United States District Court For The District Of Columbia

---

REPLY BRIEF FOR THE APPELLANT

SUMMARY OF ARGUMENT

In its main brief, Appellant City of Port Arthur demonstrated that the court below improperly withheld preclearance of the 4-2-3 election plan jointly submitted with the United States. The plan was shown to provide the City's minority population with representation reasonably equivalent to its political strength in the expanded jurisdiction. Since Port Arthur met the controlling standard enunciated in *City of Richmond*, it was error for the district court not to find that the "effect" test under § 5 of the Voting Rights Act had been satisfied. And, because it cannot seriously be argued that the City's plan fails Sec-

tion 5's "purpose" test (it was developed jointly with the Attorney General and approved by him), Voting Rights Act approval was mandated.[1]

ARGUMENT

1. In an admittedly "awkward" (U.S. Motion to Aff. 7) reversal of position, the United States now supports rejection of the 4-2-3[2] plan which it helped to draft and whose adoption it urged upon the district court. But its brief contains not a single new fact or argument not considered by the Attorney General during the discussions which led to the joint submission. Indeed, to the extent the facts have changed since the government asked that preclearance be granted by the court below, the Fall 1981 interim elections demonstrate even more convincingly that the plan satisfies the Act.

Significantly, the United States does not now argue that the 4-2-3 plan fails the well-established *City of Richmond* standard. It has conceded from the outset of these proceedings that it would have been proper for the lower court to approve the joint proposal. (U.S. Motion to Aff. 7n.). Instead, the government asserts that the district court can properly substitute its "equitable" judgment for

---

[1] On June 29, 1982, the Voting Rights Act Amendments of 1982 was signed into law. Pub. L. No. 97-205, 96 Stat. 131 (1982). Among other things, the Amendments had the effect of extending the Voting Rights Act (*id.* at § 2(b)(8)) and made changes in a number of sections not relevant here. Neither the language nor the import of Section 5 was altered. Thus, while this case is to be decided under the Act as amended, *Fusari* v. *Steinberg*, 419 U.S. 379, 387 (1975), the statutory standard to be applied remains as it was at the time of the district court's ruling.

[2] A glossary defining the various electoral plans referred to in the briefs in this matter is included as Appendix A hereto.

the City's and alter the plan proposed, even where the facts do not show a violation of the Act or the Constitution.

There is no support for this proposition in the statute or in the rulings of this Court. The decisions here have regularly restricted the authority of district courts to reject redistricting plans proposed by covered jurisdictions. For example, in *Whitcomb* v. *Chavis*, 403 U.S. 124, 160-61 (1971), the Court overturned a court-ordered apportionment plan which rejected state policy choices more than the limited amount necessary to remedy specifically identified constitutional violations.

Similarly, in *City of Richmond*, the district court had refused to preclear a proposed electoral plan because it failed to minimize dilution of black voting to the "greatest extent reasonably possible." *City of Richmond* v. *United States*, 422 U.S. 358, 366-67 (1975). On appeal here, this expansive interpretation of a district court's power under the Voting Rights Act was squarely rejected:

> As long as the ward system fairly reflects the strength of the Negro community as it exists after the annexation, we *cannot* hold, without more specific legislative directions, that such an annexation is nevertheless barred by Section 5.

Id. at 371 (emphasis added).

Just last term, in *Upham* v. *Seamon*, ___ U.S. ___, 102 S.Ct. 1518 (1982), the Court reviewed a Texas congressional redistricting plan which had been denied preclearance by the Attorney General because of objections to two of twenty-seven districts. The district court ordered additional modifications to the legislature's plan for two other districts, even though no objection had been interposed. That decision was vacated here. The lower court was not free, this Court held, to substitute its own

reapportionment preferences for those of the Texas Legislature in the absence of a finding that the plan violated either the Constitution or the Voting Rights Act. *Id.* at 1520-22.

The Court pointedly rejected the very argument advanced by the government here—that the district court possesses broad remedial authority under the Voting Rights Act to reject local policy choices in the absence of a constitutional or statutory violation:

> There may be reasons for rejecting other parts of the state's proposal, but those reasons must be something other than the limits on the court's remedial actions. These limits do not come into play until and unless a remedy is required; whether a remedy is required must be determined on the basis of the substantive legal standards applicable to the state's submission. . . . *Thus, in the absence of a finding that the Dallas reapportionment plan offended either the Constitution or the Voting Rights Act, the District Court was not free, and certainly was not required, to disregard the political program of the Texas State Legislature.*

Id. at 1522 (emphasis added).

The *Upham* holding is merely the latest in a long line of cases in which the Court "has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the federal court should make every effort not to preempt. *Connor* v. *Finch*, 431 U.S. 407, 414-415 (1977); *Chapman* v. *Meier*, 420 U.S. 1 (1975); *Gaffney* v. *Cummings*, 412 U.S. 735 (1973); *Burns* v. *Richardson*, 384 U.S. 73 (1966)." *Wise* v. *Lipscomb*, 437 U.S. 535, 539 (1978). *Accord*, *Beer* v. *United States*, 425 U.S. 130 (1976). The court below also has observed frequently that its role under § 5 is a limited one, and that its judgment is not to be substituted for local decisions absent compelling need. *See* Memorandum Opinion (June

12, 1981), J.A. 74a. *Accord, Busbee* v. *Smith*, No. 82-0665, slip op. at 57 (D.D.C., filed July 22, 1982) (jurisdiction "free to draw . . . districts pursuant to whatever criteria it deems appropriate so long as the effect is not racially discriminatory . . . ."); *City of Rome* v. *United States*, 472 F. Supp. 221, 248 (D.D.C. 1979), *aff'd.*, 446 U.S. 156 (1980).

On the facts here, no justification has been shown for an intrusion into local affairs by the district court. Where a redistricting plan offers minorities representation equivalent to their political strength in an enlarged jurisdiction, Section 5 is satisfied. *City of Richmond* v. *United States*, 422 U.S. 358 (1975). *Accord, City of Rome* v. *United States*, 446 U.S. 156 (1980); *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U.S. 144 (1977). The City's 4-2-3 plan demonstrably meets this standard, having produced in an actual election control of 33% of the city council by the City's 35% black voting age population.[3] There is, therefore, no basis—"equitable" or otherwise—upon which the lower court can be affirmed.

2. The bulk of the brief of the United States is devoted to an effort to show that the findings contained in the Memorandum Opinion of June 12 support the terse, unexplained July 14 order of the divided lower court. This argument is misconceived, however, because it focuses exclusively on the two at-large seats, rather than looking at the "effect" of the entire nine-seat plan on minority rights overall as required by the Act. Moreover, the June 12 findings are simply not germane to the plan now at

---

[3] As noted in our main brief, the Fall 1981 interim elections were conducted pursuant to orders of two courts, employing a procedure stipulated to by all parties (Br. App. 8 n.8). The at-large seats were not part of the elections since they are at issue here.

issue since they involve consideration of the effect of fundamentally different electoral schemes. The 8-0-1 and 4-4-1 plans rejected below arose in a context wholly removed from that surrounding the present 4-2-3 plan drafted with the help of, and approved by, the Department of Justice.

A. It is well recognized that courts must evaluate redistricting plans as a whole. *Burns* v. *Richardson*, 384 U.S. 73, 83 (1966); *Maryland Committee for Fair Representation* v. *Tawes*, 377 U.S. 656, 672-73 (1964); *Lucas* v. *Forty-fourth General Assembly of Colorado*, 377 U.S. 713, 735 n.27 (1964). In *Whitcomb* v. *Chavis*, 403 U.S. 124, 146 (1971), the Court recognized the essential practicality of voting rights determinations, and emphasized the importance of assessing the "real life impact" of voting changes in the context of the overall situation in which they occur.

In the present case, no doubt remains as to the "effect" of these voting changes. Whereas in the past blacks have never elected more than one member to the city council, the 4-2-3 plan proposed creates at least three, and perhaps more, minority-controlled seats on the nine-member body. (As a result of the interim elections, Port Arthur is now governed by a council composed of four blacks and five whites.) In the joint submission to the district court, the United States recognized that this plan offers blacks the same opportunity for representation as they would derive from a scheme employing eight fairly-drawn single-member districts. (J.A. 80a). And, while under an all single-member district plan a voter can influence only the selection of the representative from his own ward, under the 4-2-3 plan a voter in any of the three majority black districts impacts the outcome of four council races—the two single-member districts in which he

resides and the two at-large seats.[4] The proposed plan, therefore, gives black voters a significantly broader say in the outcome of council elections than would an all single-member system.

Finally, and perhaps most importantly, the "effect" of the 4-2-3 plan is at its core more favorable to blacks than the plan proposed in mediation by the group the court below characterized as "representing the black community." (J.A. 28a). That plan, known as "2-6-1," also featured six single-member districts and two at-large seats elected by majority vote. (J.A. 27a). However, because there are residency districts incorporated in the plan now before the Court—as compared to the "pure" at-large seats of the 2-6-1 plan—the present proposal is even more responsive to minority voters. It is one of the ironies of the district court's rejection of the joint proposal that the parties are now before the Court litigating a plan which at one stage or another has been acceptable to everyone.

Not surprisingly, given the persuasive power of these facts in light of the governing *City of Richmond* standard, the arguments of the United States ignore the demonstrated impact of the 4-2-3 plan. The government seeks instead to focus the Court's attention exclusively on the two at-large seats, as if they could properly be considered in a vacuum and without regard to the minority representation guaranteed by the single-member features of the plan. But the Act has never been interpreted to require that each and every seat, analyzed in isolation, satisfy the "effect" test of Section 5 all by itself. Such a

---

[4] For the convenience of the Court, a schematic drawing showing the interrelationship of the plan's nine positions is attached as Appendix B.

construction would absurdly limit the ability of covered jurisdictions to respond to local conditions. *Cf. City of Dallas* v. *United States*, 482 F. Supp. 183, 187 (D.D.C. 1980) ("mixed" plan involving use of eight single-member and three at-large majority vote seats approved by Attorney General under Section 5).

To the contrary, the Court's opinions recognize the need for flexibility under the Act. Rather than dogmatically reviewing the insular "effect" of each individual seat in an electoral scheme, its decisions have encouraged jurisdictions to employ their own policy judgments in designing election plans, subject only to the overall *City of Richmond* standard. *See Upham* v. *Seamon*, ___ U.S. ___, 102 S.Ct. 1518 (1982); *Wise* v. *Lipscomb*, 437 U.S. 535, 539 (1978); *Connor* v. *Finch*, 431 U.S. 407, 414-15 (1977); *Whitcomb* v. *Chavis*, 403 U.S. 124, 160-61 (1971). That is, the plan, taken as a whole, must provide minorities with representation equivalent to their political strength. Judged by this standard, Port Arthur's proposal clearly passes muster.

The rule applied by the district court, and belatedly embraced by the United States, is tantamount to a holding that a majority vote requirement is *per se* prohibited. No decision of this Court has construed the Act in such a sweeping fashion. Indeed, the opposite result was reached in *City of Mobile, Ala.* v. *Bolden*, 446 U.S. 55 (1980). While that case presented a constitutional challenge, the Court took the opportunity to consider the precise question whether an at-large majority vote "system of municipal elections violates the rights of [minority] voters in contravention of federal statutory or constitutional law." *Id.* at 58. No such broad prohibition was found to exist. *Id.* at 60, 80. *Accord, Jordan* v. *City of Greenwood*, 534 F. Supp. 1351 (N.D. Miss. 1982).

The 4-2-3 plan, of course, does not present "pure" at-large seats like those considered by the Court in *City of Mobile*. Rather, the two at-large seats here feature residency districts—one of which is drawn to favor minority representation. It follows, therefore, that the plan cannot be rejected absent a finding that, overall, it denies minorities proper representation. In the court below, the government acknowledged that the plan satisfied the overall requirements of the Act, concluding after careful consideration that in this case the majority vote requirement combined with a residency district did not justify denial of preclearance. (J.A. 81a). The results of the interim elections lend great force to this conclusion and demonstrate the error manifest in the lower court's holding that the plan "insufficiently neutralizes"[5] the dilution in minority voting strength.

B. The government tries to support its argument as to the "effect" of the at-large seats by a zealous review of the findings in the lower court's June 12 Opinion. There, however, the court was addressing an entirely different electoral configuration which was adopted in circum-

---

[5] In its July 14 Order, the district court declared that preclearance was denied because the proposed plan "insufficiently neutralizes the adverse impact upon minority voting strength" resulting from the annexation. (J.A. 87a). This is not a full statement of the carefully formulated standard this Court has applied in Section 5 cases. In its June 12 Opinion, the court below recognized this, articulating the test as whether the plan "adequately neutralize[d] the adverse impact of the expansion of Port Arthur by providing the black community with the opportunity to obtain representation reasonably equivalent to its voting strength in the enlarged City." (J.A. 62a). The latter—but not the former short-hand statement—is the governing principle on which this case turns. *City of Richmond* v. *United States*, 422 U.S. 358 (1975).

stances entirely apart from the present case. Under the 4-4-1 plan, the lower court determined that blacks would be able to elect one, and at the most two, candidates to the city council. (J.A. 57a-58a). The district court also held that the plan was infected with a discriminatory purpose. (J.A. 69a). By contrast, the interim elections of late 1981 prove that the 4-2-3 plan permits the City's 35% black voting age population to control the election of three representatives to the nine-member council. In addition, the plan provides for substantial minority influence over the selection of at-large position 7, which is chosen from a 70.83% black district. Finally, no party has suggested that the present plan, jointly submitted with the Attorney General, is tainted by a discriminatory motive.

These factors significantly differentiate the present 4-2-3 plan from the prior plans about which the district court wrote on June 12. It simply stretches the lower court opinion too far to apply in detail, as the government does, the conclusions reached there to this new and substantially different electoral plan. For example, the court's conclusions as to the prior plans were clearly influenced by its determination that they were improperly motivated. That issue has now disappeared. Thus, the government's assumption that the findings made on June 12 regarding earlier plans support the July 14 order is without merit. The district court itself did not try to apply its conclusions concerning the prior plans to its rejection of the 4-2-3 plan. It relied solely on "the joint submission, intervenor-defendants' response thereto, and the oral argument of all counsel . . . ." (J.A. 87a).

In sum, the order entered by the divided court remains unexplained, and the government's arguments as to why the court added conditions to the plan are pure speculation. This much is clear about the situation, however—

viewed as a whole, as it must be, the plan has been shown to provide the City's minority population with representation reasonably equivalent to its political strength.

3. The government and intervenors repeatedly characterize the June 12 order as "unappealed" or "unchallenged," when nothing could be further from the truth. Port Arthur disputes the district court's findings and conclusions in numerous material respects. It has not burdened this Court with a recitation of those differences because the lower court's findings are irrelevant to the present controversy over the propriety of a plan which was not before the district court on June 12. When the City and the United States agreed upon the 4-2-3 plan now at issue, the book was closed on the question of the purpose and effect of the earlier plans. It is of no moment now that the City does not concede (and it most emphatically does not) the correctness of the lower court's findings in support of conclusions not now under consideration. In any event, to the extent it matters, by appealing the July 14 final order of the district court, the City necessarily appealed all rulings and opinions of the district court entered in connection therewith, including the June 12 order. *Munoz* v. *Small Business Administration*, 644 F.2d 1361 (9th Cir. 1981); *Elfman Motors, Inc.* v. *Chrysler Corp.*, 567 F.2d 1252 (3d Cir. 1977).

The Court should be aware of the procedural and evidentiary circumstances under which the district court reached the conclusions manifest in its Opinion of June 12. In *Mosely* v. *Sadler*, 469 F. Supp. 563 (E.D. Tex. 1979), the intervenor-defendants and the City litigated the constitutionality of the voting plan then in effect in Port Arthur, which involved the at-large election of council members by majority vote from residency districts. The

Mosely court entered "extensive findings of fact concerning racial polarization, black participation in the political process, and municipal responsiveness to black needs in the areas of employment and city services." (J.A. 33a). In the district court here, the City filed a plea of collateral estoppel to prevent re-litigation of those issues resolved in the *Mosely* case. The plea was unopposed, and Port Arthur presented no other evidence on those matters. The district court took the plea under advisement and closed the record.

It was not until the June 12 Opinion was issued that the City learned that its plea was denied. (J.A. 32a). As a result, the district court's conclusions in this case are based on a one-sided record and contradict in almost every material respect the detailed findings of the *Mosely* court which were based on a full evidentiary showing by the City. Thus, for example, in *Mosely* the court found that blacks participated fully and effectively on 15 city committees, commissions and agencies (*id.* at 569); "[b]lack participation in city council meetings and work sessions has been full and effective, reflecting no subtle discrimination or estrangement from the process of government" (*id.* at 570); the City has a lawful and non-discriminatory employment and promotion policy for fire and police personnel and it has aggressively recruited black fire and police personnel (*id.* at 571); "[t]here is no evidence of racial discrimination in the recruitment, employment, promotion and termination of personnel by the City" (*id.* at 572); and, there is no discrimination in the provision of municipal services to minority residential areas (*id.* at 572-73). Against the backdrop of these findings, the *Mosely* court determined that the seven-place all at-large plan there under review "[h]as not cancelled,

diluted or minimized the vote or voting strength" of blacks in Port Arthur. *Id.* at 574.[6]

4. Finally, the United States devotes substantial effort to attempting to persuade the Court that the conditions imposed by the district court on the 4-2-3 plan are reasonable. This argument misses the point. Only one electoral scheme is currently before the Court for preclearance, and that is the plan proposed by the City. Under the Voting Rights Act, it is the covered jurisdiction which presents an electoral plan for approval, and the function of the judiciary is to grant or deny preclearance where requested in a declaratory judgment action. If preclearance is denied, the jurisdiction bears the responsibility of devising a new scheme which addresses the concerns aired by the district court and of submitting it for review.

To speed this process, the Court has approved the presentation by the district court of suggested changes in a rejected proposal which would render it acceptable. In this case, the district court made such a suggestion and "offered" (J.A. 87a-88a) its approval if the conditions were adopted by the City. The court recognized, however, that its authority to order specific changes was limited, and that its intrusion into local affairs was to be

---

[6] It is apparent, then, that when the City developed the 8-0-1 and 4-4-1 voting plans put before the court below, it did so in the face of a judicial determination that use of the at-large system in Port Arthur "[h]as neither the purpose nor effect of depriving any person full access to, participation in and response from the city government and its processes. . . ." *Mosely* v. *Sadler*, 469 F. Supp. 563, 574 (E.D. Tex. 1979). This finding contrasts sharply with the lower court's conclusion that the justifications offered by the City for these plans are "specious." (J.A. 72a).

held to a minimum consistent with the scheme of the Act. (J.A. 74a). *See Beer* v. *United States*, 425 U.S. 130 (1976); *City of Rome* v. *United States*, 472 F. Supp. 221, 248 (D.D.C. 1979), *aff'd.*, 446 U.S. 156 (1980). Further, acceptance of the proffered conditions is merely one course open to a subject jurisdiction. While it must, barring appeal, alleviate the concerns expressed by the district court, there is nothing in the statute or the opinions of this Court limiting the freedom of a jurisdiction to submit a totally new plan for preclearance.

The only issue in this appeal is whether the 4-2-3 plan prepared by the City and the United States satisfies the Voting Rights Act. The desirability *vel non* of the conditions proposed by the district court is not at issue. Should this Court hold that the proposed electoral scheme does not satisfy Section 5, Port Arthur would be required to submit a new plan for preclearance. The only limitation on such a plan is that it meet the standards of the Act as announced in the opinions of this Court.

CONCLUSION

In 1980, the Department of Justice received approximately 7,300 applications for preclearance of voting changes under Section 5.[7] The sheer volume of these requests and the number of potential lawsuits suggested underscores the wisdom of the concise, predictable standard the Court has applied under the Act. By refusing to approve Port Arthur's lawful 4-2-3 plan, the district court has not only exceeded its authority under the Voting

---

[7] Report of the Subcommittee on the Constitution to the Committee on the Judiciary on S.1922, U.S. Sen., 97th Cong., 2d Sess. 53 (1982).

Rights Act, but has unnecessarily confused the essential clarity of the *City of Richmond* standard. This court should vacate the July 14, 1981 order of the district court and remand the case to that court with instructions to preclear Port Arthur's 4-2-3 plan as proposed.

Respectfully submitted,

ROBERT Q. KEITH
MEHAFFY, WEBER, KEITH & GONSOULIN
1400 San Jacinto Building
Beaumont, Texas 77701
(713) 835-5011
Counsel of Record for Appellant

JAMES DOUGLAS WELCH
MICHAEL K. HAMMAKER
POPHAM, HAIK, SCHNOBRICH,
KAUFMAN & DOTY, LTD.
Suite 802
2000 L Street, N.W.
Washington, D.C. 20036
(202) 887-5154

GEORGE WIKOFF
CITY ATTORNEY OF PORT ARTHUR
P.O. Box 1089
Port Arthur, Texas 77640
Attorneys for Appellant

September 29, 1982

APPENDIX

APPENDIX A

GLOSSARY OF VOTING PLANS

"4-2-3": six single-member districts (single-member district 5 is a combination of districts 1 and 4; single-member district 6 is a combination of districts 2 and 3); 2 at-large seats (council positions 7 and 8) chosen by majority vote from residency districts coextensive with single-member districts 5 and 6, respectively; and a mayor selected at-large by majority vote (this plan is depicted in the schematic drawing in Appendix B).

"2-6-1": two at-large seats chosen by majority vote; six councilmen chosen from single-member districts; and a mayor selected at-large by majority vote.

"4-4-1": four single-member districts; four council positions chosen at-large from residency districts; and a mayor selected at-large by majority vote.

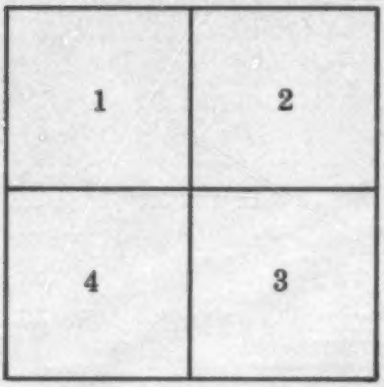
"8-0-1": eight council positions chosen at-large by majority vote from residency districts; and a mayor chosen at-large by majority vote.

"7-0-1": seven council positions chosen at-large by majority vote from residency districts; and a mayor chosen at-large by majority vote.

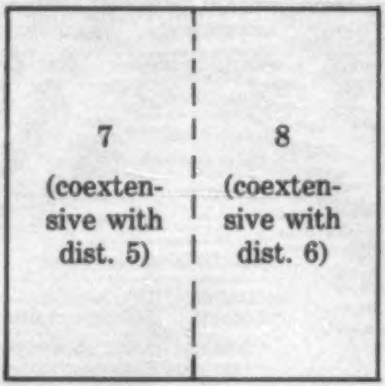
"6-0-1": six council positions chosen at-large by majority vote from residency districts; and a mayor chosen at-large by majority vote.

APPENDIX B

SCHEMATIC DRAWING OF 4-2-3 VOTING PLAN



Single-member Districts



At-large Seats With Residency Districts

Single-member Districts

Mayor Selected At-large

Docket Sheet

NO. 81-708-ATX	TITLE City of Port Arthur, Texas, Appellant v. United States, et al.

DOCKETED	COURT
October 13, 1981	United States District Court for the District of Columbia

DATE	PROCEEDINGS AND ORDERS
	Counsel for Appellant: Robert Q. Keith
	Counsel for Appellees: Solicitor General, Norman J. Chachkin, Don Floyd
Oct. 13, 1981	Statement as to jurisdiction filed. (Record filed).
Nov. 5, 1981	Order extending time for ALL APPELLEES to file a response to the jurisdictional statement until Dec. 12, 1981.
Dec. 14, 1981	Order further extending time for ALL APPELLEES to file a response to the jurisdictional statement until Dec. 28, 1981.
Dec. 29, 1981	Order further extending time to file a response to the jurisdictional statement until January 4, 1982 for all appellees.
Dec. 29, 1981	Motion of appellees Abraham Douglas and Elgie Jenkins for leave to proceed in forma pauperis, and motion to affirm filed.
Dec. 31, 1981	Motion of the U.S. to affirm filed.
Jan. 6, 1982	DISTRIBUTED. 1-22.
Jan. 8, 1982	Reply brief for the appellant filed. (D).
Jan. 25, 1982	The motion of appellees Jenkins and Douglas for leave to proceed in forma pauperis is GRANTED. Probable jurisdiction NOTED.

March 5, 1982	Order extending time to file the joint appendix and appellant's brief on the merits until March 19, 1982.
March 19, 1982	Joint appendix filed.
March 19, 1982	Brief for the appellant filed.
Apr. 16, 1982	Order extending time for all appellees to file their brief on the merits until May 10, 1982.
May 10, 1982	Order further extending time to file all appellees' to file their briefs on the merits until June 1, 1982.
June 2, 1982	Brief for the Intervenors-Appellees filed.
June 3, 1982	Brief for appellee, United States, filed.
July 13, 1982	CIRCULATED.
Sept. 29, 1982	Reply brief for the appellant filed. (D).
Oct. 6, 1982	ARGUED.